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**Remarks and Instructions**

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Please contact William Wonch at 360-705-7379 with comments, questions, or suggestions for improvement to the manual.

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Signature \_\_\_\_\_





**Washington State  
Department of Transportation**

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# Local Agency Guidelines

M 36-63.37

May 2019

**Local Programs**  
Engineering Services

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## 12.1 General Discussion

This chapter describes the distribution of Federal Highway Administration (FHWA) funds administered by the Washington State Department of Transportation's (WSDOT) Headquarters Local Programs, and presents the basic procedures for local agency participation.

FHWA funds may be used to reimburse project costs for general transportation planning, preliminary engineering, right of way acquisition, construction, and audits. FHWA funds may be expended only after WSDOT notifies the agency of federal authorization. FHWA funds are not eligible for lobbying efforts ([2 CFR Part 200.450](#)).

To use donated lands as part of the agencies' match to the project under certain conditions, see [Section 25.10](#), for details.

**.11 FHWA Eligible Roadways** – Under Fixing America's Surface Transportation Act (FAST), in order for projects to be eligible for FHWA funds, roadways must be functionally classified routes.

Specific programs require that in order to be eligible, the roadway must be identified as part of the National Highway System (NHS), or the Interstate System, which is a component of the NHS. The NHS provides an interconnected system of principal arterials and other highways serving major population centers, international border crossings, ports, airports, public and intermodal transportation facilities, and other major travel destinations to meet national defense needs and to serve interstate and interregional travel.

Routes included on the NHS are principal arterials, interstate highways, highways on the Strategic Highway Network (STRAHNET), major STRAHNET connectors, and congressional high priority routes.

Non-NHS routes include all other functionally classified routes (except rural minor collector and local access). The Act allows up to 15 percent of Surface Transportation Block Grant (STBG) rural dollars to be used on rural minor collectors.

**.12 Federal-Aid Highway Program (FAHP)** – This is an “umbrella” term that encompasses most of the federal programs providing highway funds to the states. The passage of the Fixing America's Surface Transportation Act (FAST Act) provides funds for transportation projects from the following federal programs (see [Section 12.5](#)):

- National Highway Performance Program (NHPP)
- Surface Transportation Block Grant (STBG)
- Congestion Mitigation and Air Quality (CMAQ)
- Highway Safety Improvement Program (HSIP)
- National Highway Freight Program (NHFP)
- Transportation Alternatives (Previously Transportation Alternatives Program) (TA)
- Ferry Boat Program (FBP)
- Emergency Relief Program (ER)

Washington has a unique approach to splitting federal highway funds between state and local government. There is a requirement to sub-allocate about half of the Surface Transportation Block Grant (STBG) funding to local entities based on population, and there is also metropolitan planning money for local organizations. Due to our state's history of collaboration and open discussion, the State provides more money to local governments than required by federal law. Since the Intermodal Surface Transportation Act (ISTEA) in 1991, Washington State has engaged in a discussion about how to split the Federal-Aid Highway Funds between WSDOT and local jurisdictions.

Historically, the funds have been distributed on a percentage basis. In general, the overall state/local distribution is an accumulation of the distribution of the individual Federal-Aid Highway Programs (FAHP). Where applicable, the distribution of each of the federal program areas is based on a data-driven approach, while also considering ownership and whether the program benefits the state or local system.

### **Federal Aid Highway Program (FAHP) Overview**

The FAHP encompasses most of the federal programs providing highway funds to the states and is administered by the FHWA. The program is primarily funded from revenues collected by the United States Treasury from certain federal taxes on gasoline, tire sales, and other items, which taxes are deposited into the federal Highway Trust Fund.

The FHWA is the federal agency within the USDOT responsible for administering the FAHP, which is a reimbursement program. Washington is responsible for the operation and maintenance of federal-aid highways in the state.

Once projects are approved by FHWA and funds are obligated, the federal government makes payments for costs as they are incurred on projects. With few exceptions, the federal government does not pay for the entire cost of a federal-aid project. Federal reimbursements are typically required to be matched with non-federal funding sources (state and/or local funds). The maximum federal share is specified in the federal legislation authorizing the program. In Washington, the typical federal share has been adjusted to 86.5 percent to account for the amount of federal land in Washington.

1. Funding under the FAHP is provided through a multi-step funding cycle that includes: Authorization by Congress of the funding for various highway programs, typically on a multi-year basis (e.g., FAST Act, MAP-21, SAFETEA-LU, etc.). The authorization act defines the programs and establishes maximum funding levels. When an authorizing act establishes a program, it sets rules for the amount of funds available in a Federal Fiscal Year (FFY), a description of how the funds are to be distributed, the length of time during which the funds may be used, and a list of eligible activities. Through "contract authority," authorized amounts become available for obligation according to the provisions of the authorization act without further legislative action. By definition, contract authority is unfunded and a subsequent appropriations act is necessary to pay the obligations under contract authority.

2. **Apportionment and Allocation** – the authorization act sets the distribution of contract authority to be apportioned and/or allocated to the states. The authorized amount for a given FFY is distributed to the states through apportionments and allocations.
  - **Apportionments** – The distribution of funds using a formula provided in law is called an apportionment. Each FFY, the FHWA is responsible for apportioning authorized funding for the various highway programs among the states according to formulas established in statute. In general, apportionments are available for three years plus the year that they are apportioned. It is the practice in Washington to use the oldest apportionment available when obligating funds. This approach prevents the lapsing of apportionment.
  - **Allocations** – Some FHWA funding categories do not have a legislatively-mandated distribution formula, the distributions of funds are termed “allocations,” which may be made at any time during the FFY. In most cases, allocated funds are divided among states with qualifying projects applying general administrative criteria provided in the law, such as Ferry Boat Program.
3. **Obligation** – the federal government’s commitment to reimburse for the federal share of an approved project’s eligible costs. This commitment occurs when the project is approved and the project agreement is executed. FHWA distributes Obligation Authority to states proportionately based on each state’s share of apportioned and allocated revenues. The actual ratio of Obligation Authority to apportionment and allocations may vary from state to state, since some federal-aid programs are exempt from the obligation limitation. A state’s Obligation Authority (unlike its apportionments and allocations of authorized funding) must be obligated before the end of the FFY for which it is made available; if not, it will be redistributed to other states to help ensure that the total limitation nation-wide will be used.
4. **Appropriations** – Congress specifies the amount of funds available for the year to liquidate obligations as a means of balancing the annual level of highway spending with other federal budget priorities. The Obligation Limitation is the amount of authorized funding that Congress allows states to obligate in an individual year. This is a statutory budgetary control that does not affect the apportionment or allocation of funds. Rather, it controls the rate at which the funds can be used, and, in effect, can limit the amount of funds that can be used. WSDOT has been successful in obligating its full amount of Obligation Authority and the additional Obligation Authority made available to the state through the annual process of redistributing federal funds from those states and programs that are unable to utilize all of their obligation authority.
5. **Program Implementation** – covers the programming and authorization. In order to receive federal reimbursements for transportation projects, states are required to develop long-range transportation plans that are based on projections of state and federal funding. Projects are not eligible for federal reimbursements unless they are either directly identified or consistent with a long-range plan and included in the Statewide Transportation Improvement Program (“STIP”). The STIP requires FHWA and FTA approval.
  - **Traditional Approach.** WSDOT requests FHWA approval of the use of federal funding by phase (PE, RW, CN) for the appropriate federal share of the project. The project must be in the STIP and identifying the category and amount of federal funding. FHWA evaluates and verifies the project is eligible for federal funding and meets a variety of federal requirements. Provided that all

requirements are satisfied, FHWA authorizes federal participation in the project and obligates the federal share of project costs. (Additional requirements are outlined in subsequent Chapters).

- Advance Construction (AC) Approach. WSDOT requests FHWA approval of AC to authorize a project in advance of the apportionment of federal-aid funds. Under AC, FHWA is asked to authorize the project without obligating federal funds. A state/local agency will provide the up-front financing for the project and then at a later date “convert” the AC project to a regular federal-aid project and obligate the full federal share of the project costs when sufficient Obligation Authority is available. At the time of conversion, state/local agency requests reimbursement for the federal share of costs incurred to date.
6. **Reimbursement** – The FAHP is a reimbursement program. As work progresses on a federal-aid project, WSDOT/local agency incur costs for the completed work and can pay for those costs from available state/local funds and/or request reimbursement. The state/local agency electronically transmits vouchers for the federal share of completed work and certifies the claims to FHWA/WSDOT for review and approval monthly. (see Chapter 23)

## 12.2 Programming Projects

**.21 Planning Requirements** – The Federal Transportation Act requires a continuous, cooperative and comprehensive (3C) performance-based statewide and metropolitan multimodal transportation planning process. This process involves:

- Metropolitan Planning Organization (MPO) long-range transportation plans.
- MPO transportation improvement programs (MTIPs).
- A statewide long-range transportation plan.
- A Statewide Transportation Improvement Program (STIP).

The statewide planning process carries out a 3C performance-based multimodal transportation approach for making transportation investment decisions to support the national goals throughout the state. The process for developing the statewide plan and transportation improvement program shall include metropolitan and non-metropolitan local officials with responsibility for transportation, including transit operators, tribal nations, and federal land management agencies. At the state and federal levels, policies and procedures are established to provide for statewide coordination of transportation programs.

**.22 Local Agency Transportation Programs** – The local agency transportation program is a listing of prioritized projects that a local agency expects to begin during the next six years. Projects in the local agency transportation program are all FHWA, Federal Transit Administration (FTA), regionally significant projects regardless of funding source and other state or locally funded projects. All cities, towns, counties, tribal nations, and transit agencies are required to prepare and adopt their individual transportation programs annually.

- Cities and towns are required to prepare and adopt a six-year Transportation Program by June 30 annually and file a copy with the Secretary of Transportation not more than 30 days after adoption ([RCW 35.77.010](#)).

- Counties are required to prepare and adopt a six-year transportation program by December 31 annually and file copies with the County Road Administration Board (CRAB) and the Secretary of Transportation not more than 30 days after adoption ([RCW 36.81.121](#)).
- Tribal Nations are required to prepare a Tribal Transportation Improvement Program (TTIP) and forward it to the Bureau of Indian Affairs (BIA). ([25 CFR 170.400](#)).
- Transit agencies are required to prepare a six-year transit development plan by September 1<sup>st</sup> of each year and file a copy with WSDOT, the Transportation Improvement Board, cities, counties, and regional planning councils where the transit agency is located ([RCW 35.58.2795](#)).
- WSDOT prepares a 6-year project delivery plan based on identified system deficiencies and priorities by July 1 annually and makes the plan available for use in consulting with communities, metropolitan and non-metropolitan local officials.

Once the agency's transportation programs are adopted, federally funded and regionally significant projects are submitted to MPOs for inclusion in the Regional TIP. County lead agencies and rural cities can submit directly to WSDOT or the RTPO for inclusion in the STIP based on an agreed upon process.

WSDOT developed a web-based system for agencies to prepare their six-year transportation programs and submit them electronically. For additional information on the system, go to [www.wsdot.wa.gov/localprograms/programmgmt/stip.htm](http://www.wsdot.wa.gov/localprograms/programmgmt/stip.htm).

## 12.3 Coordination With Agencies

**.31 Metropolitan Planning Organizations (MPO)** – An MPO is the policy board designated to carry out the metropolitan transportation planning process for an urbanized area with 50,000 or more population as designated by the Bureau of the Census. ([23 USC 134\(d\)](#) and [23 CFR Part 450](#)).

MPOs with populations over 200,000 are designated as Transportation Management Areas (TMAs). Some responsibilities of the TMA/MPO are:

- Carry out a 3C performance-based multimodal transportation planning process for decision making to support national performance goals.
- Prepare a 20-year metropolitan transportation plan (MTP) that is financially constrained and serves as a basis for the selection of projects in the MTIP.
- Develop programmatic mitigation plans to address the potential environmental impacts of future transportation projects.
- Develop a congestion management process, typically called a CMP.
- Develop criteria that relate to regional priorities, establish application procedures, project selection, inform local agency of selection, and monitor to ensure delivery of regional STP, CMAQ, and TAP funds that correlates with the MTP. Federal funds cannot be sub-allocated to individual jurisdictions or modes based on a predetermined percentage or formula ([23 CFR 450.326\(m\)](#)).
- Develop a four-year MTIP, which:
  - Is required to be updated at least once every four years and approved by the MPO and Governor or Governor's designee.
  - Contains projects consistent with the current metropolitan transportation plan.
  - Includes a list of prioritized projects for four years.

- Follows a documented public participation plan that provides reasonable opportunities for involvement in the metropolitan transportation planning process by interested parties.
  - Includes a financial plan for implementing the projects that is also consistent with reasonable expectation of available funding.
  - Includes sufficient descriptive project descriptions (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.
  - Contains projects being funded by Title 23, FHWA, or Title 49, FTA funding.
  - Estimates the total cost of the project (all phases, all funding sources).
  - Contains the amount of federal, state, and local funds to be obligated during each program year.
  - Contains regionally significant projects funded with federal funds other than those administered by FHWA or FTA and projects funded with non-federal funds.
  - Contains a project or identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or phase within the time period contemplated for completion of the project or the identified phase (see STIP Appendix C).
  - Includes performance target achievement. The MTIP shall include, to the maximum extent practicable, a description of the anticipated effect of the TIP toward achieving the performance targets established in the metropolitan transportation plan, linking investment priorities to those performance targets.
- Each year, include a listing of obligated projects (including investments in pedestrian walkways and bicycle transportation facilities). The listing shall be published by March 30 of each year, identifying the Title 23 and/or Title 49, FHWA funds, and FTA funds that were obligated in the preceding calendar year. For each federally funded project, the listing shall include:
    - All federal funded projects authorized or revised to increase obligations in the previous calendar year.
    - The agency responsible for carrying out the project or phase.
    - Sufficient project descriptions (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.
    - The amount of federal funds requested in the TIP.
    - The federal funding obligated during the previous calendar year.
    - The federal funding remaining for subsequent years.
  - After the MPO TIP is approved, it is submitted to WSDOT through the web-based system for inclusion in the STIP.

**.32 Regional Transportation Planning Organizations (RTPO)** – As part of the Growth Management Act (GMA), the state legislature authorized the creation of RTPOs ([RCW 47.80](#)). RTPOs are voluntary organizations composed of local governments within a county, or within geographically contiguous counties, whose purpose is to coordinate transportation planning on a regional basis and to develop a regional transportation plan as applicable. Some RTPO responsibilities may include:

- Establish a cooperative planning process with public involvement.
- Provide a forum for state and local agencies to coordinate their planning.
- Certify that local plans are consistent with the GMA and the regional plan.

- Prepare a regional transportation plan that identifies regionally important transportation facilities, outline a strategy and approach for the region to guide system development and a financing plan.
- Develop a six-year RTIP which is required to be updated at least once every two years and includes a prioritized list of regional projects drawn from state, transit, tribal, city, and county transportation programs and how the program of projects will be financed.
- Develop criteria that relates to regional priorities, establish application procedures, project selection, inform local agency of selection, and monitor to ensure delivery of regional TAP funds. Federal funds cannot be sub-allocated to individual jurisdictions or modes based on a predetermined percentage or formula (23 CFR 450.324).

After the RTPO TIP is approved, it is submitted to WSDOT through the web-based system. Only the first four years of the RTPO TIP, County Lead agency and rural city transportation programs are included in the STIP.

A list of MPOs and RTPOs is at:

[www.wsdot.wa.gov/nr/rdonlyres/91717186-9193-4054-807d-3b229d016fe8/0/mportpowsdotdirectory021113.pdf](http://www.wsdot.wa.gov/nr/rdonlyres/91717186-9193-4054-807d-3b229d016fe8/0/mportpowsdotdirectory021113.pdf)

A map of MPOs and RTPOs is at:

[www.wsdot.wa.gov/nr/rdonlyres/cf5ead4f-f9c9-46f9-b97a-f0e7945f2254/0/mportpomapforweb.pdf](http://www.wsdot.wa.gov/nr/rdonlyres/cf5ead4f-f9c9-46f9-b97a-f0e7945f2254/0/mportpomapforweb.pdf)

**.33 County Lead Agencies** – County lead agencies are responsible for developing a county-wide approach to select priority transportation projects in their respective boundaries. Transportation needs of the rural counties are often much different than the needs of metropolitan areas. Rural counties frequently partner with the smaller local jurisdictions to meet the broader needs of the county-wide transportation system. Responsibilities of county-lead agencies include:

- Develop criteria that relate to county-wide priorities, establish application procedures, project selection, inform local agencies of selection and monitor to ensure delivery of Surface Transportation Program (STP) funds. Federal funds cannot be sub-allocated to individual jurisdictions or modes based on a predetermined percentage or formula (23 CFR 450.326(m)).
- Include non-metropolitan local officials with responsibility for transportation, including tribal nations and provide for consideration of all modes of transportation.
- Public involvement through the respective agency's six-year program hearings and selection processes.

After projects are prioritized, selected, and approved through the county-wide process, the projects are programmed in the respective lead agency's transportation program. Upon adoption of the agency's transportation program, it is submitted for inclusion in the STIP. Each county lead agency works with its jurisdictions to ensure process for inclusion in the STIP.

**.34 Local Agencies Outside MPOs** – Local agencies outside MPOs are required to comply with the state six-year programming laws as well as federal law under the Federal Transportation Act, 23 USC, and 49 USC for any project they wish to finance with federal funds. Public involvement includes the six-year program hearings and the public comment processes for the local agency.

## 12.4 Statewide Transportation Improvement Program (STIP)

The Federal Transportation Act requires that each state develop a STIP as a condition to authorize federal funds for transportation projects. The STIP is a four-year prioritized program of transportation projects, compiled from rural transportation programs, RTIPs and MTIPs that have been found consistent with Regional and Metropolitan Transportation Plans along with the Washington Transportation Plan (WTP). The STIP includes projects such as pavement overlays, roadway widening, bridge replacement or repair, signal systems, safety enhancements, bicycle and pedestrian facilities, and transit or other multimodal improvements. Projects included in the STIP are funded by a combination of federal, state, and local sources. Federally funded aid projects must be included in the STIP before FHWA or FTA can authorize the expenditure of federal funds. Once projects are approved in the STIP, agencies may request project authorization with federal funds.

The STIP is developed annually beginning in October. A draft STIP is available for public review and comment in November on WSDOT's website. WSDOT submits the final STIP to FHWA and FTA, which is approved in January. The STIP is available on WSDOT's STIP web page that includes a searchable database. Monthly STIP amendments are submitted to FHWA/FTA for approval and are available for public review and comment on WSDOT's website concurrently for 10 calendar days.

The STIP includes:

- All TMA transportation improvement programs without change.
- All MPO transportation improvement programs without change.
- The first four years of all RTPO transportation improvement programs.
- The first four years of rural transportation programs for agencies not in an RTPO.
- Involvement of:
  - Local Agencies
  - Regional Transportation Planning Organizations
  - Transportation Management Areas
  - Metropolitan Planning Organizations
  - WSDOT
  - Transit Agencies
  - Tribal Nations
  - The Governor's Office

The basic required elements of the STIP are:

- All proposed highway and transit projects in the state funded under Title 23 and Title 49 USC, including federal lands projects.
- Consistent with the statewide transportation plan.
- In areas that are in a non-attainment status under the Clean Air Act for carbon monoxide, ozone, particular matter less than 10 microns in diameter (PM<sub>10</sub>), or PM<sub>2.5</sub>, include projects that conform with the State Implementation Plan (SIP).
- Consistent with expected available funding.
- Identify projects and selection priorities developed with appropriate consultation and coordination with local jurisdictions, metropolitan planning organizations, and federal lands agencies.
- Include regionally significant projects funded with federal funds other than those administered by FHWA or FTA, and projects funded with non-federal funds.
- Meet the requirements of 23 USC 135(e), Statewide Planning, coordination with local jurisdictions, and approved by FHWA and FTA.
- Include a project or identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or phase within the time period contemplated for completion of the project or the identified phase.

The STIP shall include for each project or phase:

- Project descriptions (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.
- An estimate of the total project cost (all phases, all funding sources).
- The amount of federal, state, and local funds proposed to be obligated during each program year.
- Complete funding for the phase identified (all funding sources).

WSDOT is primarily responsible for implementing the Washington State STIP. This cannot be accomplished without recognizing the requirements of all transportation providers in developing their various transportation programs. Agencies within an MPO must submit projects to the MPO, who will then submit the projects to WSDOT for inclusion in the STIP. Agencies within a RTPO and/or County lead agency verify with the applicable agency the process regarding project submittals for inclusion in the STIP.

The following schedule shows the processes and responsibilities required by state and federal law to develop Washington's STIP. Many of the events on the schedule interact with others and require cooperation and communication among government agencies. The schedule is crucial to managing transportation funding. Agencies must plan adequate time for discussion and analysis and public involvement, as well as time to submit information for review.

Annual STIP Timeline	
Deadline	Description
June 30	Cities' and towns' six-year transportation programs are adopted.
July	Agencies and WSDOT submit projects for inclusion in the STIP to MPOs and RTPOs, as applicable.
July 31	Adopted transportation programs are due to WSDOT.
August/September	MPOs assemble regional TIPs and prepare analysis for conformity finding (as applicable).
August	WSDOT reviews draft MPO TIPs. As requested, WSDOT reviews draft RTPO TIPs, County Lead and city transportation programs.
September 1	Transit agencies six year plans are due.
September/October	WSDOT, FHWA and FTA review MTIPs for air quality conformity.
October	All MPO and RTPO TIPs are due to WSDOT when the October amendment is due.
November	WSDOT approves MPO TIPs. FHWA and FTA issue Regional Air Quality Conformity finding. WSDOT makes the draft STIP available for public review.
December	WSDOT submits the STIP to FHWA and FTA for approval.
December	Counties adopt annual budgets and six-year programs.
January	FHWA and FTA approve the STIP.

The STIP is amended each month through October. The STIP amendment schedule is available at [www.wsdot.wa.gov/localprograms/programmngmt/stip.htm](http://www.wsdot.wa.gov/localprograms/programmngmt/stip.htm).

## 12.5 Funding Sources

The federal aid highway funding is administered through WSDOT, which is responsible for ensuring that federal and state requirements and procedures are followed. This responsibility is further documented in the FHWA and WSDOT Stewardship and Oversight agreement (Chapter 13). Once a project is selected to receive federal aid highway funding, the project *must* be developed in accordance with the federal requirements and procedures that apply to federal aid highway projects. All FHWA funded programs are reimbursement programs for financing transportation projects.

FHWA provides apportionment, allocations and obligation authority to each state. Distribution between WSDOT and locals is based upon the Governor's advisory group recommendation. MPOs, RTPOs and county lead agencies are notified accordingly of the annual funding available and the expectation that they deliver their proportionate share to ensure that FHWA funds are maximized. For additional details: [www.wsdot.wa.gov/LocalPrograms/ProgramMgmt/funding.htm](http://www.wsdot.wa.gov/LocalPrograms/ProgramMgmt/funding.htm)

**.51 Surface Transportation Block Grant Program (formerly the Surface Transportation Program (STP))** – The STBG program provides flexible funding that may be used by WSDOT and local agencies for projects to preserve and improve the conditions and performance on any federal aid highway, bridge and tunnel projects on any public road, pedestrian and bicycle infrastructure, and transit capital projects, including intercity bus terminals.

For details on all eligible activities and additional details, go to [www.fhwa.dot.gov/fastact](http://www.fhwa.dot.gov/fastact)

Agencies are expected to consider the relative importance of the route, roadway condition, and traffic impact on NHS routes as they prepare their six-year programs for their roadway systems. The local agencies and the responsible selection agencies will ensure their respective NHS routes are given priority in their programming process.

### STBG Funding

- A portion of the STBG funding is suballocated to MPOs, RTPOs, and county lead agencies based on 2010 census population. The FAST Act requires the sub-allocated amount based on population to grow over the period of the Act (51% in FY 2016; 52% in FY 2017; 53% in FY 2018; 54% in FY 2019; 55% in FY 2020). The suballocated amounts are distributed as follows:
  - **Urbanized areas greater than 200,000** – Project selections are made by the MPOs in consultation with the State. These funds may be used anywhere within the planning area boundary of the MPO.
  - **Areas greater than 5,000 but no more than 200,000** – Funds are allocated to MPOs and county lead agencies and can only be used in areas encompassed by adjusted urban or urbanized area boundaries. Need to ensure that these funds are not used in any rural areas, regardless of whether they may be within an MPO's planning area.
  - **Areas with population of 5,000 or less (distributed based on rural lane miles)** – Funds are allocated to MPOs and county lead agencies and may be used anywhere that is outside of an adjusted urban or urbanized area boundaries. These funds can be used in rural areas including those encompassed by an MPO's planning area. Annually statewide, there is the ability for localities to utilize up to 15 percent of the amount reserved for rural areas for rural minor collector improvements.
- The remaining STBG is available for use in any area of the state and distribution is left to the discretion of the state. Local agencies are provided a proportion of these funds in their annual allocation that are distributed to all based on 75% total population/25% total county lane miles. Local Programs administration costs is taken off after initial allocations based on proportional share of the total allocation for each MPO and county lead agency.
- Two separate set-asides are included in the STBG funding:
  - Transportation Alternatives (described below)
  - Off-system bridges – this funding is combined with NHPP funding to total approximately \$45 million/annually for replacement, rehabilitation and preventative maintenance of local agency bridge on and off the federal aid system. (see Chapter 34 or go to: [www.wsdot.wa.gov/LocalPrograms/Bridge/Funding.htm](http://www.wsdot.wa.gov/LocalPrograms/Bridge/Funding.htm))

The federal participation rate for STBG is 86.5 percent.

For details on all eligible activities go to: [www.fhwa.dot.gov/fastact](http://www.fhwa.dot.gov/fastact)

**.52 National Highway Performance Program (NHPP)** – The NHPP program provides funding for the condition and performance of the National Highway System (NHS), for the construction of new facilities on the NHS, and to ensure that investments of Federal-aid funds in highway construction are directed to support progress toward the achievement of performance targets established in the State's asset management plan for the NHS. The NHPP program provides funding that may be used by WSDOT and local agencies for projects including: construction, reconstruction, resurfacing,

restoration, rehabilitation, and preservation of highways and bridges, including bridges on a non-NHS Federal-aid highway (if Interstate System and NHS Bridge Condition provision requirements are satisfied); bridge and tunnel inspection and evaluation, as well as training bridge and tunnel inspectors; transit capital; environmental restoration and mitigation; safety; construction, rehabilitation, or replacement of ferry boats and facilities; Intelligent Transportation Systems (ITS); and bicycle and pedestrian infrastructure.

FAST continues the focus on performance, accountability and performance targets nationally. This requirement has states develop a risk-based asset management plan for the NHS. To meet these requirements WSDOT utilizes the majority of the funding for preservation and improvements on state owned NHS facilities. In addition, locally owned NHS facilities are eligible to compete through the following statewide programs.

The statewide NHS Asset Management program. The objective of the program is to highlight the importance of preserving the roadway system by incentivizing agencies to use asset management strategies that provide cost-effective solutions to maximize the life expectancy of a NHS roadway. [www.wsdot.wa.gov/LocalPrograms/ProgramMgmt/NationalHighwaySystem.htm](http://www.wsdot.wa.gov/LocalPrograms/ProgramMgmt/NationalHighwaySystem.htm)

Also, approximately 6 percent of the NHPP program for local entities is dedicated to fund a portion of a statewide local agency competitive bridge program. (see [Chapter 34](#) or go to: [www.wsdot.wa.gov/LocalPrograms/Bridge/Funding.htm](http://www.wsdot.wa.gov/LocalPrograms/Bridge/Funding.htm))

For information on the designated local NHS routes, go to: [www.fhwa.dot.gov/planning/national\\_highway\\_system/nhs\\_maps/section1122.cfm](http://www.fhwa.dot.gov/planning/national_highway_system/nhs_maps/section1122.cfm)

For details on NHPP and eligible activities, go to: [www.fhwa.dot.gov/fastact/factsheets/nhppfs.cfm](http://www.fhwa.dot.gov/fastact/factsheets/nhppfs.cfm)  
[www.fhwa.dot.gov/specialfunding/nhpp/160309.cfm](http://www.fhwa.dot.gov/specialfunding/nhpp/160309.cfm)

**.53 Highway Safety Improvement Program (HSIP)** – The HSIP continues in the FAST Act to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-state owned public roads and roads on tribal lands. The HSIP requires a data-driven, strategic approach to improving highway safety on all public roads that focuses on performance.

- **Strategic Highway Safety Plan** – The safety program requires each state to develop and implement a strategic highway safety plan that is approved by the Governor. Washington State’s plan is called Target Zero. Target Zero identifies safety problems and includes strategies to improve them. As part of the plan, the state is required to develop an evaluation process to assess results and use the information for future improvements.

The two priority areas of Target Zero are run-off-the-road and intersection crashes. The numbers of serious and fatal crashes are used to develop a program split which equals 30% to WSDOT programs and 70% to local agencies, primarily cities and counties. The local responsibility includes crashes on city streets designated as state highways in cities that exceed 25,000 population. The program includes set-asides for High-Risk Rural Roadways (HRRR) and the Railway-Highway Crossing Program. Also, approximately \$2 million/biennium is provided for the Safe Routes to School (SRTS) program.

- **Local Safety Programs** – Safety projects selected must be consistent with the strategic highway safety plan. WSDOT has three programs to assist local agencies to address safety:
  - a. **City Safety Program** – The goal of the program is to fund the design/ preliminary engineering, right of way, and construction phases of projects that will reduce fatal and serious injury collisions on city streets in cities of any population and state highways that serve as arterials within cities with a population above 25,000. Projects are identified through a local road safety plan through utilization of crash data to address spot location improvements such as: specific intersections, compact roundabouts, mid-block locations or corridors, as applicable, or a systemic low cost, widespread, risk based approach throughout a city or over wide areas within a city.
  - b. **County Safety Program** – The goal of the program is to fund the design/ preliminary engineering, right of way, and construction phases of projects that will reduce run-off-road and intersection-related fatal and serious injury collisions on county roads. Projects are identified through a local road safety plan through utilization of crash data to identify and prioritize systemic low cost, widespread, risk based approach such as: high friction surface treatments, increase operations or visibility of traffic signals and/or signs, intersection conflict warning systems or specific intersections improvements including roundabouts, as applicable.
  - c) The Railway-Highway Crossing program provides funding for safety improvements to reduce the number of fatalities, injuries, and crashes at public grade crossings. The program must use at least 50% of these funds to install or upgrade protective devices at railroad crossings. Examples include gates, pedestrian crossings, signal systems, and signing. Funds may also be used to eliminate grade crossings by closing them or providing grade separation.

All projects funded through this program are required to report on subsequent crash data to FHWA for those years after completion of the project.

The federal participation rate for HSIP is 90 percent.

The FAST Act, established five safety performance measures for State Departments of Transportation (DOTs) to establish targets and report on annually. Targets are established based on the five-year rolling averages for: (1) Number of fatalities, (2) Rate of fatalities per 100 million VMT (vehicle miles traveled), (3) Number of serious injuries, (4) Rate of serious injuries per 100 million VMT, and (5) Number of non-motorized fatalities and non-motorized serious injuries. States are required to report annually and meet 4 of the 5 focus area targets to maintain compliance.

For details on all eligible activities, go to [www.fhwa.dot.gov/fastact/guidance.cfm](http://www.fhwa.dot.gov/fastact/guidance.cfm)

**.54 Transportation Alternatives** – The FAST Act replaced the Transportation Alternative Program (TAP) with a set-aside of Surface Transportation Block Grant (STBG) program funding for transportation alternatives (TA). These set-aside funds include all projects and activities previously eligible under TAP, encompassing a variety of smaller-scale transportation projects, such as on-and off-road trail facilities, pedestrian and bicycle facilities, infrastructure projects for improving non-driver access to public transportation and enhanced mobility, community improvement activities, environmental mitigation, and safe routes to school projects.

#### Suballocation of TA

- 50 percent of TA funding is suballocated to MPOs, RTPOs, and county lead agencies based on 2010 census population as follows:
  - Urbanized areas greater than 200,000.
  - Areas greater than 5,000 but no more than 200,000.
  - Areas with population of 5,000 or less.
- The remaining 50 percent is available for use in any area of the state and distribution is left to the discretion of the state. At this time, approximately \$4 million/biennium is dedicated to the statewide Safe Routes to School program and the remaining is provided to the RTPOs.

WSDOT and MPOs are not eligible project sponsors for TA funds. However, State DOTs and MPOs may partner with an eligible project sponsor to carry out a project. Also, nonprofits are not eligible as direct grant recipients of TA funds unless, they are a designated transit agency, school, or responsible for the administration of local transportation safety programs.

The federal share for TA is 86.5 percent.

The FAST Act requires states and MPOs to report annually to USDOT on project applications and projects that are awarded TA funding. The USDOT must make these reports available to the public. The reports are based on each Federal Fiscal Year (FFY). The report is due from the MPO/RTPO/County by November 20th each year to WSDOT's Local Programs office in order to meet the FHWA deadline in December.

MPO/RTPO/County is to submit to WSDOT a report for each FFY that includes:

- The number of project applications received that FFY;
- The aggregate cost of the projects for which applications were received that FFY;
- The number of projects selected for funding that fiscal year, including:
  - Aggregate costs of the projects selected, and
  - Location of the projects selected.
- The types of projects to be carried out, based on the following seven categories:
  - Pedestrian and Bicycle Facilities
  - Recreational (recreational trail projects only)
  - Turnouts, Overlooks, Viewing Area
  - Historic Preservation
  - Environmental and Wildlife
  - Safe Routes to School
  - Other – Inventory, control or removal of outdoor advertising

For details on all eligible activities, go to [www.fhwa.dot.gov/fastact/guidance.cfm](http://www.fhwa.dot.gov/fastact/guidance.cfm)

**.55 Congestion Management and Air Quality (CMAQ)** – The CMAQ program provides funding for transportation projects and programs that will reduce congestion and improve air quality for areas that do not meet the National Ambient Air Quality Standards (NAAQS) for ozone, carbon monoxide, or particulate matter (non-attainment areas), and for former nonattainment areas that are now in compliance (maintenance areas).

The Clean Air Act (CAA) of 1970 also provides for a set-aside for those areas with a classification for PM<sub>2.5</sub> (particulate matter under 2.5 micrograms in diameter). For more information on Air Quality requirements, see the *Environmental Manual* M 31-11.

The primary intent is for these projects and programs to result in tangible reductions in oxides of nitrogen and sulfur (ozone precursors) and CO emissions within a timeframe to allow attainment as provided in the Clean Air Act Amendments (CAAA) of 1990. It is important to note that the Clean Air Act requires highest priority be given to the implementation of the transportation portions of applicable SIPs and Transportation Control Measures (TCMs) from applicable SIPs.

An evaluation and assessment of CMAQ projects and programs to determine the direct and indirect impact of the projects on air quality and congestion is required. Air quality benefits must be determined and documented to have projects qualify for CMAQ funds.

CMAQ funds are distributed to the five MPOs representing maintenance areas – Puget Sound Regional Council (PSRC), Spokane Regional Transportation Council (SRTC), Yakima Valley Conference of Governments (YVCOG), and Thurston Regional Planning Council (TRPC). FAST has a set-aside for MPOs designated as nonattainment or maintenance areas for PM<sub>2.5</sub> that are to be used to address PM<sub>2.5</sub> emissions. Tacoma, within PSRC, is designated as a maintenance area for PM<sub>2.5</sub>.

Project planning activities are eligible only if the project leads directly to construction of a CMAQ project; that is, system planning and other non-project specific planning is not eligible. Developing computerized systems, such as a Geographic Information System, are not eligible. Studies to analyze future transportation needs are eligible only to the extent they are needed to develop project specific construction plans.

Sidewalk extensions and wheelchair ramps are eligible if they are incidental to an eligible CMAQ project, but are not eligible if they are the only work in the project. Paving projects for dust control are eligible only in areas where PM<sub>10</sub> nonattainment is or has been attributed to transportation sources.

If FTA determines eligibility, CMAQ funds may be transferred to FTA to purchase alternate fuel buses and refueling stations for bus fleets and transit conversion to alternate fuel and personal rapid transit systems. Converting municipal fleet operations to alternate fuel source such as compressed natural gas is eligible in areas that require conversion as a measure to mitigate noncompliance in the Clean Air Act.

The FAST Act requires WSDOT to report to FHWA annually on the CMAQ project obligations and associated air quality benefits for the project. MPOs annually provide WSDOT each obligated project's air quality benefits for submission into the national database of CMAQ investments, air quality benefits. The information is utilized by FHWA personnel for Congressional reporting and available to states and MPOs on an individual request basis. Also, FHWA has released a CMAQ Public Access System that provides the opportunity for the general public to have access to the FHWA approved data at: [https://fhwaapps.fhwa.dot.gov/cmaq\\_pub/](https://fhwaapps.fhwa.dot.gov/cmaq_pub/)

FAST requires performance measures be established by USDOT for states to use to assess traffic congestion and on-road mobile source emissions and target to address those performance measures to be set by the state. In Washington, PSRC (a Transportation Management Area over one million in population representing a maintenance area) is required to develop and update biennially a performance plan to achieve air quality and congestion reduction targets.

The federal participation for CMAQ is 86.5 percent.

For details on all eligible activities, go to [www.fhwa.dot.gov/fastact/factsheets/cmaqfs.pdf](http://www.fhwa.dot.gov/fastact/factsheets/cmaqfs.pdf)

**.56 Ferry Boat Program (FBP)** – The FBP continues in FAST for the construction of ferry boats and for design, right of way, and construction of ferry terminal facilities. Funds will be allocated to states for distribution to the specific eligible public entity.

Federal aid highway funds are available for capital improvements to existing ferry facilities, as well as construction of new ferry facilities. Cost-effective preventive maintenance activities that extend the useful life of the ferry facility are also an eligible activity under 23 USC 116(e). However, operational costs of a ferry, such as costs of ferry service administration, crews, general maintenance, and fuel, are not eligible for direct federal aid highway funding.

Ferry entities are required to submit data to the national ferry database in order to be eligible for FBP funding. FBP funds will be allocated using the most current data to public owned ferry entities. FBP funds are available for three years and then withdrawn. Project scopes are required to be submitted to WSDOT for FHWA approval prior to inclusion in the STIP.

The federal participation is 80 percent.

For details on all eligible activities, go to [www.fhwa.dot.gov/fastact/factsheets/ferryboatfs.cfm](http://www.fhwa.dot.gov/fastact/factsheets/ferryboatfs.cfm)

**.57 Emergency Relief (ER) Program** – The FAST Act continues the Emergency Relief program, which provides funds for emergency repairs and permanent repairs on Federal-aid highways and roads, tribal transportation facilities, and roads on Federal lands that have suffered serious damage as a result of natural disasters or catastrophic failure from an external cause. Refer to [Chapter 33](#) for details.

**.58 National Highway Freight Program (NHFP)** – The FAST Act establishes a National Highway Freight Program to improve the efficient movement of freight on the National Highway Freight Network (NHFN) and support several goals, including—

- Investing in infrastructure and operational improvements that strengthen economic competitiveness, reduce congestion, reduce the cost of freight transportation, improve reliability, and increase productivity;
- Improving the safety, security, efficiency, and resiliency of freight transportation in rural and urban areas;
- Improving the state of good repair of the NHFN;
- Using innovation and advanced technology to improve NHFN safety, efficiency, and reliability;
- Improving the efficiency and productivity of the NHFN;
- Improving State flexibility to support multi-State corridor planning and address highway freight connectivity; and

- Reducing the environmental impacts of freight movement on the NHFN. [23 U.S.C. 167 (a), (b)]

The WSDOT facilitated Freight Advisory Committee, which includes broad representation of local and freight stakeholders, prioritizes projects for the NHFP funding that is appropriated each biennium by the State Legislature.

The federal participation rate is 86.5 percent.

For details on all eligible activities, go to [www.fhwa.dot.gov/fastact/guidance.cfm](http://www.fhwa.dot.gov/fastact/guidance.cfm)

## 12.6 FHWA Discretionary Programs

FHWA administers some discretionary programs through its various offices. These discretionary programs represent special funding categories where FHWA solicits for candidates and selects projects for funding based on applications received. Each program has its own eligibility and selection criteria that are established by law, by regulation, or administratively. Below is a brief description of these programs.

**.61 Federal Lands and Tribal Transportation Programs** – The Federal Transportation Act continues to acknowledge the importance of access to federal and tribal lands. Recognizing the need for all public federal and tribal transportation facilities to be treated under uniform policies similar to the policies that apply to federal aid highways and other public transportation facilities, a unified program was created for federal lands transportation facilities, federal lands access transportation facilities, and tribal transportation facilities.

- **Federal Lands Transportation Program** – Provides funding for projects that improve access within federal lands, such as national forests, national wildlife refuges, national recreation areas and other federal public lands on transportation facilities in the national Federal Lands transportation inventory, and owned and maintained by the federal government. The National Park Service, U.S. Fish and Wildlife Service and U.S. Forest Service receive annual allocations identified in legislation. The Secretary decides allocation amounts for Bureau of Land Management, Bureau of Reclamation, U.S. Army Corps of Engineers, and eligible independent Federal agencies with natural resources and land management responsibilities.
- **Federal Lands Access Program** – Provides funding for projects on federal lands access transportation facilities that are located on or adjacent to, or that provide access to federal lands. The program supplements state and local resources for public roads, transit systems, and other transportation facilities that provide seamless access to high-use federal recreation sites or federal economic generators with federally-owned lands. Funds are distributed by formula based on recreational visitation, federal land area, federal public road mileage, and the number of federal public bridges. Programming decisions will be made locally using a tri-party model in each state comprised of representatives from FHWA, state DOT, and local government, in consultation with applicable Federal Land Management Agencies (FMLAs). A new federal match is required for these funds.
- **Tribal Transportation Program** – Provides funding for projects that improve access to and within Tribal lands. This program continues to provide set-asides for tribal bridge projects, tribal safety, program administration and tribal planning. FAST continues the statutory formula for distributing funds among tribes, based on tribal population, road mileage, and average tribal shares under the SAFETEA- LU Indian Reservation Road program.

**.62 Other Discretionary Programs** – The FAST Act also contains other nationwide competitive discretionary programs such as:

- Infrastructure For Rebuilding America (INFRA) Grants – A program initially established as the Nationally Significant Freight and Highway Projects (NSFHP) program to provide financial assistance or credit assistance—to nationally and regionally significant freight and highway projects.
- Transportation Investment Generating Economic Recovery (TIGER) discretionary grant program, provides a unique opportunity to invest in road, rail, transit, and port projects that promise to achieve national objectives. The TIGER program's eligibility requirements allow project sponsors at the state and local level to obtain funding for multi-modal, multi-jurisdictional projects that are more difficult to support through traditional DOT programs.

For details on all eligible activities go to [www.fhwa.dot.gov/fastact/guidance.cfm](http://www.fhwa.dot.gov/fastact/guidance.cfm) or [www.transportation.gov/tiger](http://www.transportation.gov/tiger).

## 12.7 FHWA Fund Transfers to Another Federal Agency for Administration

In the event an agency would like funds administered by another federal agency (FTA, BIA, WFL, etc.), the local agency must submit to WSDOT:

1. The project's STIP page that reflects the funding is programmed in the first year,
2. A copy of the federal agency concurrence (email/letter) to accept FHWA funds and administer the project, and
3. Local agency request to transfer.

**.71 Federal Transit Administration (FTA) Transfers** – Funds may be transferred from FHWA to FTA for projects that are eligible under FTA. If the project is a traditional transit project, it should be transferred to FTA. If the project involves construction of roads or highways, it should stay with FHWA.

For projects that are not clearly transit or highway, the project sponsor should select the administering federal agency. This selection should be done in informal consultation with the two agencies and the Washington State Department of Transportation. Park and ride lots, Transportation Demand Management (TDM) activities, and intermodal facilities might be eligible under both agencies' programs.

This matrix illustrates the FTA transfer options:

	FTA	FHWA
Transit Rolling Stock	X	
Park and Ride Lots	X	X
Pedestrian Ways	X	X
Refueling Bus	X	
Carpool and Vanpool	X	X
Regional Rideshare	X	X
Commuter Trip Reduction	X	X
Bikeways		X
Intermodal Station	X	
Bus and Signal Priority		X
Transit Maintenance and Operations	X	
Ferry Terminals	X	X
Passenger Ferry Vessels	X	
People Mover	X	
Auto Ferry Vessels-Metro (Puget Sound)	X	
Auto Ferry Vessels-Rural		X

If the project is to be implemented through FTA, the entire project, including all phases, should be transferred. In some instances, (some transit planning studies and selected projects not clearly defined above), funds to a transit agency may be approved through FHWA. Generally, these projects will have their scope of work and administrative oversight administered through WSDOT's Public Transportation Division.

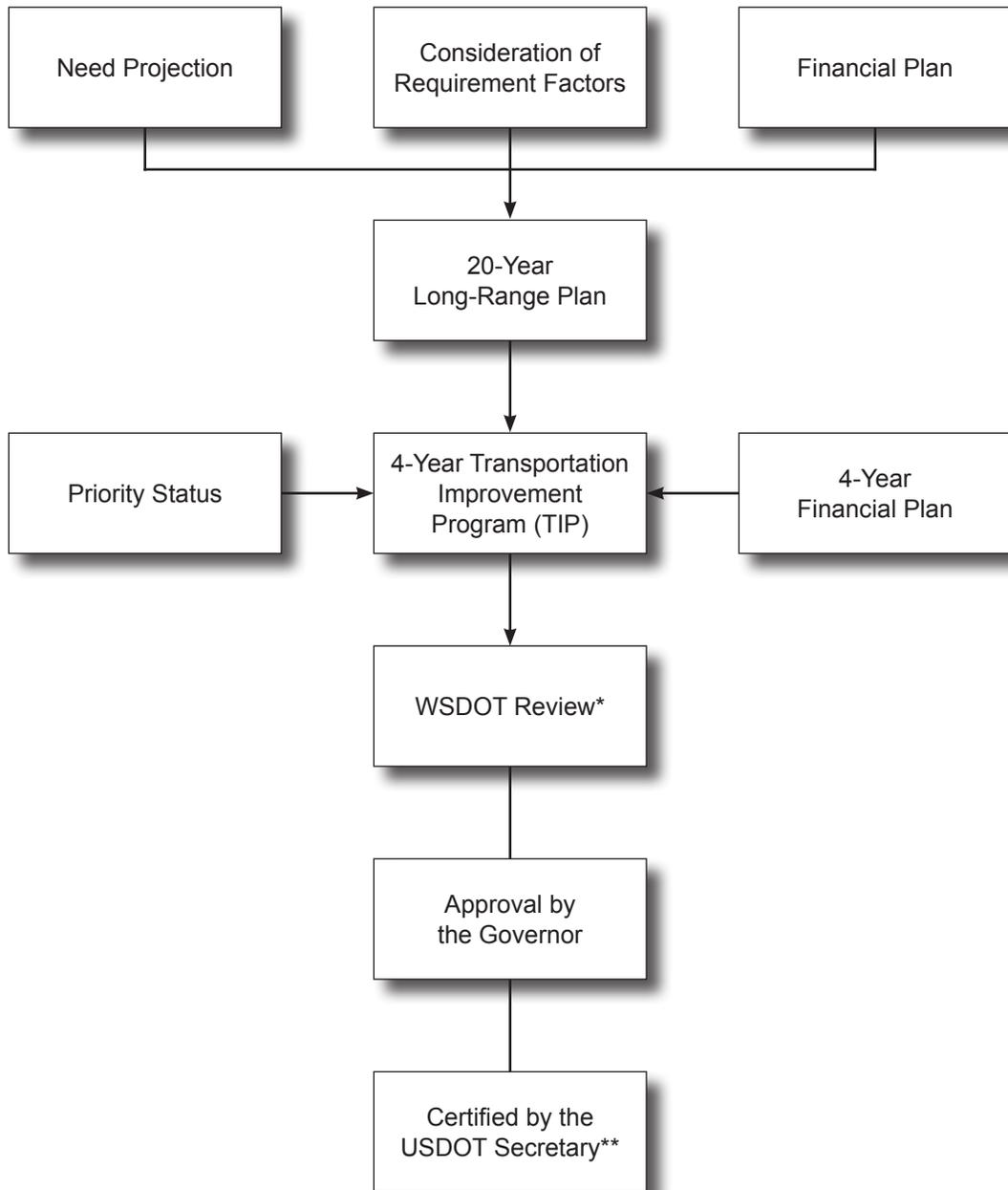
Once FTA has reviewed the application and it is complete and ready for approval, FTA requests the transfer through Local Programs. Local Programs will request the transfer of funds from FHWA to FTA. FHWA action to transfer the funds is considered an obligation of federal funds. FTA will subsequently work with the grant recipient to utilize the transferred funds.

## 12.8 Appendices

- [12.81](#) MPO Planning Flowchart
- [12.82](#) STP Lead Agencies

# Appendix 12.81 MPO Planning Flowchart

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\*TMAs exempted.  
\*\*TMAs only.

**Regional Planning and Programming Process  
(Simplified Chart for MPOs)**

## **Appendix 12.82      STP Lead Agencies**

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Adams County  
Benton-Franklin Council of Governments  
Chelan-Douglas Transportation Council  
Clallam County  
Columbia County  
Cowlitz-Wahkiakum Council of Governments  
Ferry County  
Garfield County  
Grant County  
Grays Harbor Council of Governments  
Island County  
Jefferson County  
Kittitas County  
Klickitat County  
Lewis-Clark Valley MPO  
Lewis County  
Lincoln County  
Mason County  
Okanogan County  
Pacific County  
Pend Oreille County  
Puget Sound Regional Council  
San Juan County  
Skagit Council of Governments  
Skamania County  
Southwest Washington Regional Transportation Council (RTC)  
Spokane Regional Transportation Council  
Stevens County  
Thurston Regional Planning Council  
Wahkiakim County  
Walla Walla Valley MPO  
Whatcom Council of Governments  
Whitman County  
Yakima Valley Conference of Governments



# Chapter 22      *Local Agency Agreement*

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## 22.1    **General Discussion**

A Local Agency Agreement is an agreement between a local agency and the Washington State Department of Transportation (WSDOT). An agreement is prepared for each federal aid project, and it covers all phases of work involved in the project (preliminary engineering, right of way acquisition, construction). Its purpose is to ensure that the federal funds in the agreed-upon amount are spent in accordance with all applicable state and federal laws and regulations. The agreement also specifies the procedure for payment and reimbursement on the project.

If the federal aid participation ratio entered in the agreement is not the maximum rate allowed by the Federal Highway Administration (FHWA), then the participation ratio entered becomes the maximum rate allowed.

No costs are eligible for federal aid reimbursement until authorized in writing by WSDOT. This authorization is separate from the agreement

The total cost of a project (including federal, state, agency, and private funds) must be shown on the Local Agency Agreement for each phase of work that includes federal or state funds. At the time of each phase authorization, all funds necessary to complete the scope of work for that phase must be secured.

**Project Agreement End Date** – All projects are now required to have a Period of Performance which includes both a begin date and an end date. A project’s begin date is the date of FHWA authorization. Local agencies will be required to supply an estimated Project Agreement End Date for each federally authorized phase of a project. To ensure adequate time for the delivery of local projects, which are subject to state environmental requirements, substantial community involvement, eminent domain, and coordination with other local projects, WSDOT recommends when establishing the “Project Agreement End Date” local agencies consider:

- For **Planning Only** projects – WSDOT recommends local agencies estimate the end of the project’s period of performance and add three years.
- For **Preliminary Engineering** (PE – design) and **Right of Way** (RW) – WSDOT recommends local agencies estimate when each phase will be completed and add three years to each, due to the complications that may arise with environmental requirements and approvals and negotiating right of way with property owners and railroads.
- For **Construction** (CN) – WSDOT recommends local agencies estimate when construction will be completed and add three years, to provide adequate time to acquire all the necessary paperwork, releases, and negotiate any claims for closure of the project.

**Note:** Any costs incurred after the “Project Agreement End Date” are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted within 60 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

When authorizing construction, the agency's proposed advertisement date must be noted on the supplemental Local Agency Agreement, or the original LAA if construction is the first phase authorized. Local Agencies are expected to go to ad within six weeks of construction authorization.

All funds shown on the Local Agency Agreement must be supported by a documented cost estimate ([23 CFR Part 630](#)) that is based on an Agency's best estimate of costs. The cost estimate must demonstrate how the funds shown on the LAA were determined, and what information was used in the calculation.

## 22.2 Preparation Procedure

An original Local Agency Agreement signed by the approving authority must be submitted by the local agency to the Region Local Programs Engineer when the Project Prospectus ([Chapter 21](#)) is submitted. This agreement form will be retained by WSDOT. It is the responsibility of the local agency to submit an additional agreement form or a copy if they need an executed agreement for their files. To allow sufficient time for WSDOT review and execution, these documents should be submitted a minimum of 4 weeks prior to the time when federal reimbursement is desired.

Agreements containing errors will be returned to the local agency for correction. Any changes must be initialed by the approving authority ([Chapter 13](#)). To avoid this delay, the agency should check all figures prior to submittal, and if in doubt, request assistance from the Region Local Programs Engineer.

An agreement form (DOT Form 140-039) is contained in [Appendix 22.51](#), with instructions for completing it in [Appendix 22.52](#). Local agency cost estimates for each phase of a project are entered on the form, as well as the project name, length, termini, description, Project Agreement End Date, Proposed Advertisement Date (required for construction phase) and method of construction financing. These methods are described in [Appendix 22.52](#).

Local agency resolutions or ordinances that may be needed are discussed in [Appendix 22.52](#).

## 22.3 Supplemental Agreement

Funds requested beyond the amount set forth in a Local Agency Agreement, supplementing for the next phase of the project and/or a change to the Project Agreement End Date will require execution of a Supplemental Agreement.

Changes to the project funding must be made in accordance with this manual (see [Chapter 12](#)) and must be accompanied by documented cost estimates for phases already authorized or seeking authorization ([23 CFR Part 630](#)).

All projects shall submit a supplemental agreement to revise the federal funds obligated within 90 days after it is determined that the estimated federal share of project costs has decreased by \$250,000 or more ([23 CFR Part 630.106\(4\) Subpart A](#)).

Federal approval is required to change a Project Agreement End Date. Therefore, Project Agreement End Date may only be changed during a phase, through a supplement, if:

- a project has a change in the terms and conditions of the federal award (e.g., significant cost change or scope change); or

- adequate justification is provided for project schedule revision or other circumstances (e.g., litigation) and there is no change to the terms and conditions of the Federal project.

**Note:** Requests for reimbursement after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 60 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

A Supplemental Agreement form (DOT Form 140-041) is shown in [Appendix 22.53](#), and instructions for completing it are given in [Appendix 22.54](#). Like the original agreement form, the Supplemental Agreement form requires information about the project's name, length, termini, description, schedule and funding.

## 22.4 Documented Cost Estimate

A documented cost estimate is an itemized estimate of costs broken down by phase for a project. Preliminary engineering estimates can be based on a percentage of historical construction costs, or based on historical labor and equipment needs used to complete similar design efforts. Right of way estimates will be the right of way project funding estimate ([Appendix 25.172](#)) or true cost estimate ([Appendix 25.173](#)). Construction estimates will be the engineer's estimate, including construction engineering costs. Bid tabulations, or award data may be used to justify increases when completing Supplemental Agreements.

Acceptable references for building a documented estimate may be historical construction costs, estimates from recent similar work, WSDOT Unit Bid Analysis, or other estimating methods. A cost estimate must be provided for each phase shown on the Local Agency Agreement, including preliminary engineering. Estimates for the Construction Phase should include funds for construction engineering in addition to the Engineer's Estimate.

When submitting a cost estimate with a Supplemental Agreement please provide a brief statement explaining what costs changed since the original Local Agency Agreement was created. Bid tabulations or award data may be used to justify Supplemental Agreement increases for construction phases of a project.

## 22.5 Appendices

- [22.51](#) Local Agency Agreement
- [22.52](#) Local Agency Agreement – Instructions
- [22.53](#) Local Agency Agreement Supplement
- [22.54](#) Local Agency Agreement Supplement – Instructions
- [22.55](#) Vacant
- [22.56](#) Documented Cost Estimates – Example

## 22.6 Forms

- [DOT 140-039](#) Local Agency Agreement – Example
- [DOT 140-041](#) Local Agency Agreement Supplement – Example



## Appendix 22.54      **Local Agency Agreement Supplement – Instructions**

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- .01 **Agency** – Enter the agency name as entered on the original agreement.
- .02 **Supplemental Number** – Enter the number of the supplement. Supplement numbers will be assigned in sequence beginning with Number 1 for the first supplement.
- .03 **Project Number** – Enter the federal aid project number assigned by WSDOT on the original agreement.
- .04 **Agreement Number** – Enter the agreement number assigned by WSDOT on the original agreement.
- .05 **Project Description.** Enter the project name, length, and termini.
- .06 **Description of Work** – Clearly describe if there is a change in work such as the addition or deletion of work elements and/or changes to the termini. If the work has not changed, put a check mark in the “No Change” box.
- .07 **Reason for Supplement** – Enter the reason for this supplement, i.e., increase PE funding to cover design changes presented in the revised prospectus; request funding of construction phase; decrease construction funding to the contract bid amount. If the supplement is authorizing a construction phase, the project’s proposed advertisement date must be included in the space provided.
- .08 **Change Requiring Additional Right of Way or Easements** – Check the **Yes** box when the supplement covers a change in scope (Description of Work or Termini) that requires additional property rights that was previously expected, or when it’s determined that property rights are necessary and the project was previously submitted as no right of way required. Check **No** when this is the case.
- .09 **Claiming Indirect Cost Rate** – Check the Yes box if you will be claiming indirect costs on your project. For those projects claiming indirect costs approval by your cognizant agency and supporting documentation is required to be available for review by FHWA, WSDOT and /or State Auditor. Check the No box if you will not be claiming indirect costs on your project. See Section 23.5 for additional guidance.
- .10 **Project Agreement End Date** – Enter your previously established Project Agreement End Date. If authorizing a new phase of the project determine your revised Project Agreement End Date based on the following guidance:
  - For PE and RW – WSDOT recommends agencies estimate when the phase will be completed and add one year to determine the “Project Agreement End Date”.
  - For Construction – WSDOT recommends agencies estimate the end of the project’s period of performance and add two years to determine the “Project Agreement End Date”.

- .11 **Type of Work and Funding** – Complete this section in the manner described in [Appendix 22.52](#), Paragraph .05.
  1. **Column 1** – Enter the amounts from column 1 of the original local agency agreement. If the agreement has already been supplemented, enter the amounts by type of work from column 3 of the last supplemental agreement.
  2. **Column 2** – Enter additional amounts requested by type of work.
  3. **Column 3** – Add the amounts in columns 1 and 2.
  4. **Columns 4 and 5** – Enter the appropriate amounts based on the participation ratio recorded on the original agreement.
- .12 **Signatures** – An authorized official of the local agency signs the Supplemental Agreement, and writes in their title. Submit one originally signed supplement form to the Region Local Programs Engineer. It is the responsibility of the local agency to submit an additional, originally signed agreement form if they need an executed agreement for their file.

## Appendix 23.76 Local Programs Final Project Summary – Instructions

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The final progress bill must include a final summary. The purpose of this summary is for the Agency to report total project costs including federal, state, local and other funds received. This form can be downloaded at [www.wsdot.wa.gov/localprograms/programmgmt/forms.htm](http://www.wsdot.wa.gov/localprograms/programmgmt/forms.htm)

**Exception** – If a project is not completed and the Agency is billing remaining available funds with the possibility of incurring more eligible costs; do not mark the billing as a final bill. Upon completion of project, submit a final bill to report the eligible costs even if zero dollars are being claimed along with the final summary.

**Required Data** – This form is arranged in the same manner as the Local Agency Agreement.

The form must include the following:

- Agency Name, Project Title, Federal Aid Number and LA Agreement Number.
- Federal Participation Rate Authorized Amount, Authorized Dates, Project End Date. (Refer to the last supplement of the Local Agency Agreement).
- Type of work – Should align with Local Agency Agreement. (Add or remove lines on form as needed).
- Total Project Cost – Record all costs incurred on Project including Federal, State, Local other grants. (Add or remove lines from form as needed).
- Total Federal/State Claimed to date – Record the amount of funds reimbursed from WSDOT. This amount should mirror the amount on final progress billing column 6.
- Agency Funds – Record all costs (not reimbursed by WSDOT), that are considered Agency costs or that have been reimbursed from other Agencies, Grants, programs, etc.
- Endorsed statement by signature designee that all eligible costs have only been reimbursed by the Federal agreement and not by any other grant or funding source.

\*Total Federal/State Claimed to date plus Agency Funds should equal Total Project Cost.

Sign and date form and send to the WSDOT Headquarters Local Programs (address on form) or submit electronically via email to [hqlpbillings@wsdot.wa.gov](mailto:hqlpbillings@wsdot.wa.gov)

## 25.1 General Discussion

[LP ROW Services website](#)

The Washington State Department of Transportation (WSDOT) has overall responsibility to the Federal Highway Administration (FHWA) for the acquisition, management, and disposal of real property on all FHWA funded transportation projects in the state. WSDOT Local Agency Coordinators act as consulting experts to local governments in Washington State who are acquiring right of way for federally funded transportation projects. They independently provide high-level technical assistance, compliance monitoring, certification compliance reviews, as well as training and project support to local engineering and technical staff, their consultants and right of way professionals on behalf of WSDOT's Local Programs Division (Local Programs).

The acquisition process is regulated by Public Law 91-646 "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended", [49 CFR Part 24, Chapter 8.26 RCW](#) and [WAC 468-100](#). Neither the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) nor its implementing regulations at 49 CFR Part 24 allow the certification of right of way (ROW) to be sub-delegated to any agency or any agency with Certification Acceptance (CA) status.

[49 CFR 24.101\(b\)](#)  
[49 CFR 24.101\(d\)](#)  
[ROW Manual Section 25.2](#)  
[LPA-001](#)  
[LPA-003](#)

**If there is federal funding on ANY phase of the project, Right of Way must be acquired in accordance with the following policies and procedures in order to be eligible for federal funding:**

- **Agency's Approved ROW Procedures**
- **Federal/State requirements**
- **The guidelines outlined in this manual**
- **WSDOT's *Right of Way Manual***

**The different project phases are the Preliminary Engineering Phase (P.E.), Right of Way phase (ROW), and Construction phase (CN),**

ROW acquired prior to July 1, 1971, is exempt from the above policies and procedures. In addition, the local agency must comply with Title VI requirements identified in [Chapter 28](#).

[23 CFR 710.201\(h\)](#)

WSDOT may, by written agreement (approved ROW Procedures), use the services of land acquisition organizations of counties, municipalities, or other state or local governmental agencies for acquiring rights of way for FHWA projects. Any such organization may be used only if it is adequately staffed, equipped, and organized to provide such services, and if its practices and procedures are in substantial conformity with WSDOT accepted procedures.

It is the responsibility of WSDOT to fully inform political subdivisions of their responsibilities in connection with federally-assisted transportation projects and to provide training to the local agencies. It is the local agencies' responsibility to comply with the requirements of this chapter, the URA, and [49 CFR Part 24](#). The local agency will assess their staff's level of expertise with the requirements stated above. If the local agency determines their staff does not fully understand these requirements, it is their responsibility to request assistance and/or training to ensure the acquisition process is followed correctly.

It is essential that local agencies and WSDOT communicate freely and work closely together during the entire acquisition process to expedite projects and to assure that all federal and state requirements are met. Early notification to the Region Local Agency Coordinator (LAC) is required for projects with right of way acquisition when there are federal funds in any phase of the project.

**.11 WSDOT Services** – At the earliest possible date, the local agency should notify the LAC of upcoming federal-aid projects that have ROW activities. In addition, the local agency should advise the LAC of the need for WSDOT assistance. WSDOT is committed to an ongoing program that will provide effective assistance and guidance to local acquiring agencies. To this end, WSDOT will designate an LAC to act as consulting expert to local governments who are acquiring right of way for federally funded transportation projects. The LAC provides oversight and guidance on the federal acquisition process to ensure local agencies are acquiring, managing, and disposing of real property and real property interests consistent with state and federal regulations. ROW activities include title, appraisal, appraisal review, acquisition/negotiation, relocation, and property management activities (collectively referred to as acquisition or acquisition process).

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[Chapter 31](#)

**.12 Consultant Services** – When the local agency does not have adequate staff to perform appraisal, negotiation, or relocation functions, it may contract for these services and obtain federal participation in the costs.

The local agency should contact the Region Local Programs Engineer for assistance in preparing any contract for services to assure FHWA participation in the contract. FHWA has determined that the consultant agreements for ROW services must meet the consultant contracting requirements.

## 25.2 Approval of Right of Way Acquisition Procedures

[23 CFR 710.201\(a\)](#)

[23 CFR 710.201\(h\)](#)

[LPA-001](#)

[LPA-003](#)

When an agency intends to use federal funds in any phase of a project, the agency must assure their ROW Procedures are current and approved prior to initiating ROW activities, and must demonstrate at the time of certification that current staff is qualified and that their procedures meet LAG manual requirements. ROW procedures are normally considered current if they are less than three years old, and there have been no changes to staff approved to perform ROW activities within the agency. Procedures will need to be updated for one or more of the following reasons:

1. Staffing changes
2. Approved procedures are more than three years old. However, if the local agency does not have a federal aid project in the foreseeable future, the procedures do not need to be updated even if they are beyond the three-year time period. If the local agency is thinking of doing early acquisition for an unfunded project, the local agency needs to have updated procedures.
3. A change is requested regarding who can perform specified activities.
4. Revisions to the ROW Program, such as statutory, regulatory, or policy changes.

Acquisition procedures are submitted on local agency letterhead to the Region Local Programs Engineer (LPE) for review prior to final execution by the local agency. Region Local Programs forwards the procedures through the LAC for approval. The local agency will be approved to acquire ROW based upon the submitted procedures.

The responsibilities and expectations for each of the agency ROW positions are defined in the Right of Way Procedures form. The level at which an agency will be approved will depend on the agency's staff qualifications. Qualifications should be specific to the right of way function for which the staff is listed. Local Program's notifies the local agency of the approval with a copy to the Region LAC. Periodic reviews of procedures will be conducted by the LAC for agencies acquiring ROW on federal aid projects. If through these periodic reviews it is determined that the local agency acquisition practices are not in full compliance, or the local agency no longer has staff qualified to perform a particular function, then WSDOT will determine what actions are required to achieve full compliance and the use of qualified staff.

Approved procedures will designate the title of the position. When staff changes or additions occur, the agency will submit the person's right of way experience and qualifications to the LAC.

Procedures shall include the following:

1. Agreement to comply with state and federal laws and FHWA regulations. The agency should agree to follow this manual and the [Right of Way Manual M 26-01](#) or the agency's own manual if they have a WSDOT/FHWA approved ROW manual.
2. Agreement will list agency's current staff and position(s) performing the separate functions of program administration, appraisal, appraisal review, acquisition, relocation, and property management. All agency staff who perform any of these separate functions should be listed. **Note:** Agency personnel such as administrators and members of the executive branch who might participate in the acquisition of ROW for federal aid projects need to be aware that their actions must conform to the Uniform Act and [49 CFR Part 24](#).

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[LAG 25.51](#)

[LAG 25.6](#)

[LAG 25.91](#)

3. Resumes for all current staff, including their position(s) and a brief statement of their qualifications pertaining to the function they are performing.

4. Waiver Valuation procedures.

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[LAG 25.52](#)

[LPA-003](#)

5. A procedure for handling administrative settlements including the approving authority(s) and process.

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[49 CFR 24.10](#)

[RCW 8.26.085](#)

[WAC 468-100-010](#)

[ROW Section 12-5.5](#)

Local Agencies must have a relocation appeal procedure in place, prior to starting relocation activities for any projects involving relocation assistance, as required by federal regulations. The agency shall notify the LAC prior to starting relocation activities.

**Note:** Local Agencies need to submit FHWA Annual ROW Statistical Report for active federal aid projects by **October 25<sup>th</sup> each year**. The data provided is for ROW activities from October 1 through September 30 and should reflect parcel activities that occurred within the reporting period.

**.21 Acquiring Right of Way** – Acquisition of ROW may be performed by the following entities:

- By a local agency that is adequately staffed, equipped, and organized to discharge its ROW responsibilities and has ROW procedures approved by WSDOT-Local Programs. Staff may consist of qualified contract personnel and/or licensed private Real Estate Brokers (see [RCW 18.85](#) in addition to or in lieu of regular employees of the agency).
- By another local agency that meets the requirements above.

### 25.3 Preliminary ROW Activities

[23 CFR 710.203\(a\)\(3\)](#)

There are certain right of way activities that are eligible for preliminary engineering funds if those activities take place prior to National Environmental Policy Act (NEPA) approval or after NEPA approval but prior to the ROW being authorized. Those ROW activities that are eligible are identified in the table below:

Preliminary ROW Acquisition Activities Eligible for Preliminary Engineering Funds <a href="#">23 CFR 710.203(a)(3)</a>	Pre-NEPA or Post-NEPA & Pre ROW Authorization
Title Searches and Review	X
ROW Planning w/ROW Staff and/or Consultants	X
ROW Plan Preparation	X
ROW Design Development (determining ROW needs)	X
Public Meetings/Hearings (projects w/ROW)	X
ROW Estimates & Schedules (scoping)	X
PFE*/True Cost Estimate	X
Appraisals (including inspections) and Administrative Offer Summary (AOS)*	X
Right of Entry (testing, surveying, etc.)	X
Relocation Plan/Study (includes survey of occupants)*	X

\*Completing an appraisal/project funding estimate (PFE)/Relocation Plan during the PE Phase is an agency risk decision. If a local agency chooses to complete an appraisal, PFE, or relocation plan too early, it may require a subsequent update or a new one to be completed again. FHWA cannot pay for an activity twice if the need for the second payment was due to a local agency's business decision. However, if the update is needed due to an unexpected delay beyond the local agency's control, the incurrence of expenses for a second time should be eligible expenses.

Agencies cannot start activities that could be considered negotiations with property owners pre-NEPA for the project, unless they are acquiring under [23 CFR 710.501](#) (LPA funded early acquisition) or Section 710.503 (protective buying and hardship acquisition). Early contact of occupants cannot give the appearance of initiation of negotiations. In addition, if the agency plans to request to use the value of the acquired property as a match, they need to meet the requirements in [23 CFR 710.501](#).

Local Programs conducts billing reviews each year for selected construction projects that will address any non-compliance issues.

## 25.4 Right of Way Acquisition

Appendix 25.178  
LPA-011  
LPA-012

When there is federal participation in **any** phase of a project (PE, RW and/or CN), federal regulations **must** be followed. The checklist of Federal Aid Requirements provides useful reminders and should be used as guidance to ensure compliance.

### .41 Determining Whether or Not Right of Way (Acquisition) is Needed

1. **ROW (acquisition) Needed** is defined as land or property rights or interests necessary for construction, operation and/or maintenance of the proposed project, or any prior (advanced/early) acquisition that was acquired specifically for the current project. This includes temporary rights required to complete the construction as shown on the Plan, Specification & Estimate (PS&E) (such as placing personnel, materials, equipment, and machinery outside of existing ROW). If the property and/or property rights were acquired specifically for this project prior to NEPA start date the agency may be required to demonstrate compliance with [23 CFR 710.501](#). The agency should contact their region LPE and Environmental Engineer to determine whether additional documentation is required. If the property was purchased for use on the current project (e.g. advanced/early acquisition), then the ROW must have been acquired in accordance with the requirements of this manual.

Appendix 25.174  
Appendix 25.175

**Advanced/early acquisition** is defined as prior acquisition of property and/or property rights or interests that was completed specifically for the current project prior to NEPA approval. This does not include properties within the existing ROW that were purchased as part of a previous project. Regardless of the funding source, advanced/early ROW acquisition parcels must be included in the ROW Certificate. Contact the LAC if you have questions.

- If it is later determined that ROW is needed, either a PFE or a True Cost Estimate, as applicable, a ROW Plan, and a Relocation Plan (if required) must be prepared and submitted to the Region LPE who will notify the Region LAC (who is responsible for review and approval). There are significant differences between the two forms of estimates and care must be used when selecting either the PFE or True Cost Estimate process. The Region LAC should be consulted when this decision is to be made. See Subsection 25.46 for explanations and requirements of the PFE and the True Cost Estimate.

2. **No ROW (acquisition) Needed** means that the proposed project can be built entirely within the agency's existing ROW. Existing ROW is defined as land already incorporated into the roadway facility or land certified under a previous federal aid project. Leases, permits and easements for construction activities, slopes, drainage, etc., whether temporary or permanent, are considered ROW acquisition.

If it can be documented that the land or property rights/interests were purchased for a purpose other than the transportation related project being certified then the Uniform Act and [49 CFR Part 24](#) requirements do not apply. This would be considered existing right of way.

Appendix 25.174  
Appendix 25.175  
Appendix 25.176  
Appendix 43.62

It is the responsibility of the local agency to determine that "No ROW" is needed for a project at the time the Design Approval Documentation form is completed and prior to the obligation of funding. This can be accomplished by applying the Sufficient Property Rights Flowcharts. The agency will complete and sign the Design Approval Documentation form that acknowledges they have completed

reviewing existing property rights. In the case of a non-CA agency, the agency will work with the LPE. The No ROW Needed Verification Checklist is a tool that can be used during the local agency's ROW determination process. Once the project has been fully designed and prior to advertising the project for construction, the agency shall verify that No ROW is needed for the project. Local agency staff must be qualified to sign acknowledging the ROW part of the Design Approval Documentation form and to perform the Program Administration function under their Approved ROW Procedures. Local Programs will provide training to local agency staff responsible for these functions. The training will focus on the importance of reviewing the PS&E to make sure it is consistent with the no ROW determination. Local Programs will maintain a list of CA agency reviewers who have completed the training. Non-CA agencies will need to work with WSDOT Local Programs staff to complete the verification process.

If ROW needs change, the agency will follow the current process of updating the design approval, project prospectus, and NEPA. It is also recommended that the agency provide an amendment to the Statewide Transportation Improvement Program (STIP).

**.42 Acquiring Sufficient Property Rights** – A local agency must acquire real property interests that are adequate for the construction, operation, and maintenance of the project (23 CFR 1.23 and 710.201(e)). The preference is for local agencies to purchase fee rights or temporary and permanent easements. However, there are circumstances when other real property interests can be considered. The details of these circumstances should be discussed with the LAC prior to submitting the Right of Way Plan for approval.

If the local agency is considering acquiring something other than fee or permanent easement real property interests, then they must provide documentation establishing how the real property interests they are acquiring satisfy the requirement for sufficient property rights. FHWA must be assured that their investment in the project is in the public interest and will last for a reasonable amount of time that is commensurate with the level of investment. There are no set guidelines that describe the appropriate term length, but 20 years is the absolute minimum term that should be considered. Longer terms may be required, and the higher the federal investment, the longer the term expected by FHWA. An analysis of the design life of the improvement must be done and the minimum term must equal the design life. Unless leases are with public agencies, leases should be considered only under rare and unusual circumstances since they typically have termination clauses that could require the removal of improvements with little notice, and possibly without cause. Things to consider include:

- Is the term of the real property interest at least as long as the life cycle of the improvement? When will major maintenance be required and does the property interest term extend to when the first major maintenance is expected?
- What is the likelihood for renewal of the term of the real property interest, or invocation of any provision for its termination?
- Can a rational explanation of why the project is a good investment for FHWA under such circumstances be provided?
- If the rights acquired are from a governmental agency, is there anything in their regulations that prevent them from granting the rights requested?

**Note:** If FHWA does not accept the local agency's justification, they must be prepared for FHWA to either make a finding that they have not acquired sufficient property rights (which would preclude ROW certification) or FHWA may consider a conditional approval that would require the local agency to either repay the project funding or reestablish a replacement improvement in a new location with their own funds (and the right of way for the new location must have been acquired in accordance with the Uniform Act).

The following situations are considered to be sufficient, and do not require the agency to complete a justification to be submitted for FHWA approval:

- **DNR aquatic lands** – DNR typically grants only term easements for uses of state-owned aquatic lands. The term of an easement will normally not exceed 30 years and is not renewable by policy. A new easement may be applied for one year in advance of the current easement agreement term expiration.
- **BPA (Bonneville Power Administration)** – BPA typically grants only revocable permits (Land Use Agreement Fee) for uses under their power lines.
- **WSDOT** – WSDOT typically grants only term leases and/or easements for uses of their property.
- **Bureau of Indian Affairs (BIA)** – BIA policy may vary by tribe as not all tribes are willing to grant permanent easements. Some tribes may grant only a non-permanent easement.

ROW Manual  
Section 6-7.3

**Government-Acquisitions (Political Subdivisions)** – Examples of political subdivisions of the state of Washington are state, federal, counties, cities, towns, school districts, irrigation districts, etc. Government agencies are entitled to just compensation for the acquisition of property rights needed for federal aid transportation projects and the provisions of the URA will apply. Acquiring permanent rights or less than fee long-term rights should be done in accordance with Chapter 6 of the ROW Manual; however, there may be some deviation of URA requirements as legal authority may control how agencies transfer real property to other agencies.

The provisions of the URA ([49 CFR 24](#)) may not apply if the local agency needs to acquire temporary property rights from another agency to construct your project. The acquisition of these rights are generally through mutual consent and agreement between agencies using a permit or interlocal agency agreement. The risk is low that government agencies will not acquire the temporary proper rights from each other when constructing their federally funded transportation projects. WSDOT is making a risk-based decision to not certify temporary property rights acquired under a permit or interlocal agency agreement if there is mutual consent between agencies and the agencies have complied with the laws and regulations pertaining to the conveyance of property rights. In addition, a ROW phase will not be triggered if an agency only needs temporary property rights from another agency and no other rights are acquired for the project.

ROW Chapter 11

**Use of WSDOT Property** – The LAC should be contacted immediately when it is determined that the local agency project requires the use of WSDOT's property. The LAC will advise the local agency of the process and timeline needed to acquire sufficient legal rights to construct and operate on WSDOT property. The length and type of use of WSDOT property will determine if it will be considered an acquisition and subject to certification requirements. If a local agency requires temporary use of property owned by WSDOT for the construction of a transportation project and those rights are obtained under a WSDOT general permit or agreement, WSDOT will not consider this part of the acquisition process and the permit would not be subject to ROW certification. This also

23 CFR 710.409  
23 CFR 620

applies if a local agency obtains permanent rights from WSDOT through a relinquishment. These activities are governed by 23 CFR Part 710 Subpart D, Real Property Management and are not Uniform Act activities, nor activities which must be addressed under the certification requirements found in federal regulations. The acquisition of all other permanent property rights and/or property interests acquired from WSDOT for a federally funded local agency project is subject to certification requirements. Your agency will need to work closely with the appropriate region Real Estate Services staff to acquire the necessary property rights.

[23 CFR 635.309](#)

[Appendix 25.175](#)

#### **.43 Determining Acquisition of Property and/or (Sufficient) Property Rights**

**Fee** – Fee title should be acquired when the agency needs the exclusive use and occupancy of the property for itself. Fee simple is the unqualified ownership and power of disposition of property; all rights to control, use, and transfer the property at will are acquired.

**Easements** – An easement is a transfer of an interest in land from one party to another providing a right or privilege to enjoy the property or a part of it for a particular, specific purpose that is not inconsistent with the owner’s use and enjoyment. Easements can be temporary, permanent, or for a specified term.

**Permanent Easements** – A permanent (perpetual) easement may be acquired when the agency needs a non-exclusive right to enter upon the property of another. A permanent easement for road, street, or highway purposes should include, but not be limited to, the right to occupy, construct, control, operate, maintain, and reconstruct the facility.

[LAG 25.42](#)

**Non-Permanent Easements** – An easement that has a defined term and expiration date. Some property owners, including state/federal agencies, are unwilling to grant permanent easements. Term easements may be acceptable provided the term equals the design life.

**Temporary Easements** – A temporary easement is used when the agency requires a property right which is temporary in nature, but are not part of the permanent right-of-way. Temporary rights expire by the terms in each individual temporary easement.

[49 CFR 24.101\(c\)\(2\)](#)

**Permits** – A permit or right of entry is not an interest in land. It only provides basic permission to enter upon property to a named entity for a specific purpose, usually for a specific period of time. It cannot be transferred and can be terminated or revoked by the owner at will. In most situations, permits are used when no other property rights are to be acquired from the same ownership as part of the same project, and are normally obtained without the payment of compensation (commonly referred to as mutual benefits) because the provisions of the Uniform Act do not apply in these situations. The term mutual benefit is not defined in federal regulations and is often misunderstood and incorrectly applied by agencies to federal aid transportation projects. The use of a permit is acceptable when your agency is solely performing work exclusively for the benefit of the property owner, would not create a compensable damage, and is not needed to construct your project. Permits can be used with other agencies to perform work on their property, such as tying into another roadway. Permits are generally not considered sufficient to construct, operate or maintain proposed projects. When considering the use of permits or other property rights such as leases, rights of entry, land use licenses, etc. consult with the LAC.

LAG 25.42

All rights acquired for the project, including advanced/early acquisitions must be shown on the right of way plan.

**Property Right vs Right to Enter**

ROW Chapter 6

Exempt

RCW 18.85.151(6)

RCW 18.85.081

Property Right	Right to Enter (Permit)
Required/needed for the project	Not required/needed for the project
Element of project design	Not part of project design
Prior to offer	Post offer
Mitigation for compensable damage	Requested by owner
Show rights on ROW plan	Not shown on ROW plan
Valuation includes cost of item	No compensation paid
Temporary Construction Easement (TCE) obtained	Permit obtained
Transfers with ownership	Non-transferrable
Sufficient for construction	Not sufficient for construction

23 CFR 710.501(a)

NEPA Categorical Exclusions – A Guidebook for Local Agencies

**.44 Early/Advance Acquisitions** – *Early acquisition* is defined in federal regulations, as the “...acquisition of real property by State or local governments in advance of Federal authorization or agreement.” In practical use, early acquisition refers to the acquisition of real property prior to the final NEPA decision on a project: The Record of Decision (ROD), for projects developed with an Environment Impact Statement (EIS); a Finding of No Significant Impact (FONSI), for projects developed with an Environmental Assessment (EA); or, a Categorical Exclusion (DCE/ECS). WSDOT has two types of early acquisitions; those that occur prior to the initiation of NEPA and those that occur after the initiation of NEPA but prior to NEPA approval.

1. Concurrent Early Acquisition-After the initiation of NEPA but prior to its approval.
2. Advanced Acquisition-Refers specifically to hardship acquisitions and protective buying. It is discussed further in subsection 4 below.

In each case, federal guidelines must be followed in the acquisition process. The local agency should place copies of any documentation pertaining to early or advance acquisition approval in the parcel acquisition file if it is required as described below. In addition, note the date and actions pertaining to such approval in the parcel acquisition diary.

An agency may use eminent domain, but the agency must be able to prove public use and necessity, which may be difficult when the environmental alternatives have not been evaluated or selected. The use of eminent domain on a locally-funded acquisition in advance of a project NEPA approval is a decision that the local agency should make after undertaking a risk analysis to determine if they want to proceed with the acquisition using eminent domain. The risk analysis should consider if the proposed project has multiple alignments that could be considered to address the transportation issue. If there is only one obvious alignment, the local agency’s ability to prove public use and necessity is good, which makes the risk low. If there are multiple alignments to address the transportation issue, then the local agency should determine the property needs for the multiple alignments. If each alignment requires different parcels to address the transportation issue, then the agency’s ability to prove public use and necessity may be low due to uncertainty of the need for the parcel, and the risk is higher.

23 CFR 710.501

For all early acquisitions prior to the initiation of the NEPA process, the local agency must show that the early acquisition did not influence the project through the decision or need to construct the project, the consideration of alternatives, or the selection of the design or location of the proposed improvement and demonstrate compliance with [23 CFR 710.501](#). The agency should contact their region LPE and Environmental Engineer to determine whether additional documentation is required. If NEPA cannot be approved, then the agency cannot incorporate the parcel into the project. If the project cannot be built without the parcel, then the entire project may be ineligible for federal funding. Concurrent early acquisition parcels will be covered under the overall NEPA evaluation.

23 CFR 710.501(b)

An agency may apply market value (or if donated, the current appraised value) toward their share of project costs, as long as they meet the requirements of 23 CFR 710.501(b). The acquisition of early or advance ROW must not influence the environmental assessment for the project. Properties with a 4(f) Resource may not be purchased if the agency wants to apply the market value toward their share of project costs. The agency can only request match for the Just Compensation plus the Administrative Settlement, if applicable. The costs of the appraisal or any other documentation necessary to meet the requirements of [23 CFR 710.501\(b\)](#) are not eligible to be used as a match.

Appendix 25.177

**Early and Advanced Acquisition Alternatives.** There are five alternative methods (item #4 has two methods) of early and advanced acquisition provided in federal statutes and regulations. Each alternative has distinct conditions which must be met, as described below. However, there are certain specific conditions that every alternative must meet:

- The property must be lawfully obtained.
- The acquisition must fully comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
- Per 23 CFR 701.501(c)(5) and 771.113(d)(4) and 40 CFR 1506.1, these early acquisitions cannot have an adverse environmental impact or limit the choice of reasonable alternatives in the NEPA analysis for the project, or have an adverse environmental impact on the parcel. (e.g. If a building that would have been determined to be eligible for the National Register of Historic Places is acquired and demolished, this would be an adverse environmental impact on the parcel).
- Local agencies will not do early acquisition on properties that are protected under section 4(f) of the Department of Transportation Act of 1966, codified at 23 USC 138, and the regulations at 23 CFR 774.
- The acquisition must fully comply with Title VI of the Civil Rights Act of 1964.

Early Acquisition Options:

23 CFR 710.501(b)

1. **Agency-Funded, No Match or Reimbursement** – The agency may initiate acquisition of real property, using local funds, at any time it has legal authority to do so, based on program or project considerations prior to NEPA clearance. Pre-approval of the use of this option is not required from FHWA, and this option can be useful for corridor preservation, access management, or similar purposes. This option is used when the local agency will not be seeking either reimbursement or matching credit from FHWA. As noted above in the early acquisition alternatives, this alternative must fully comply with the Uniform Act and not have adverse environmental impacts or limits the choice of reasonable alternatives in the NEPA analysis for the project or the parcel.

- 23 CFR 710.501(c) 2. **Agency-Funded with Matching Credit** – In order for the Agency to use the acquisition costs of early acquisition as a credit toward the Agency’s matching share of a federal-aid project, the FHWA must concur in a written determination provided by the Agency that the acquisition did not influence the environmental assessment for the project or the parcel, including:
- The decision on the need to construct the project.
  - The consideration of alternatives.
  - The selection of the design or location.
  - A statement that the property will be incorporated into a Federal-aid project.
  - The original project agreement covering the project was executed on or after June 9, 1998.

In determining the costs to apply credit for the matching share of the project, the local agency will use the historic cost of the acquisition. This cost is limited to the amount that was paid to acquire the property at the time of its acquisition, and excludes appraisal fees, relocation costs, and any other costs incurred beyond the acquisition price itself. When the historic acquisition costs cannot be reasonably obtained, or such cost was not typical for the time due to extenuating circumstances, the local agency may use the current fair market value of the property.

- 23 CFR 710.501(d) 3. **Local-Funded with Reimbursement** – This option is not currently available in Washington State.

- 23 CFR 710.501(e) 4. **Federal-Funded Early Acquisition** – Consistent with federal legislation commonly referred to as MAP-21 (Moving Ahead for Progress in the 21st Century), a local agency may program an early acquisition project in the STIP and, after meeting the additional conditions listed below, request authorization to proceed with the acquisition and obtain federal funding participation. This early acquisition alternative is particularly useful for doing corridor preservation, as it does not require that the agency have a specific transportation project programmed or in development at the time the early acquisition, using federal funds is carried out.

There are some specific conditions that apply to this alternative:

- The early acquisition project must be included in the STIP.
- A NEPA analysis must be performed for the scope of the early acquisition project, and must be approved by FHWA. In most cases, if the purpose and need for this project is simply to acquire property and hold it until needed for a transportation project, the NEPA clearance would be done with a DCE/ECS. For the purpose of the NEPA analysis, and consistent with the federal requirement, an early acquisition project under this alternative is considered to have independent utility.
- Although the agency must follow the Uniform Act, as required for all other early acquisition alternatives, early acquisition under this alternative may not be carried out under the threat of eminent domain. If an agreement cannot be negotiated with a property owner, the agency will have to wait until a specific transportation project requiring this property has been completed through the NEPA process and FHWA funding is authorized for such project.
- Real property interests acquired under this option may not be developed until a specific transportation project requiring this property has been completed through the NEPA process and FHWA funding is authorized for such project.

- If the real property acquired under this alternative is not incorporated within 20 years in a project eligible for FHWA funding, FHWA will offset the State's federal funding by the amount of federal funds used in this early acquisition project.

23 CFR 710.503(a)

5. **Hardship Acquisition and Protective Buying (Advanced Acquisition Options).** In addition to the early acquisition options set out in 1 thru 4, federal regulations provide for doing advance acquisition under two options: Hardship and Protective Buying. (Unless otherwise stated elsewhere in this manual, the term "advance acquisition" will be understood to apply specifically to hardship and protective acquisition.) Normally, these two options will apply to a limited number of properties, whereas the early acquisition provisions of 1 thru 4 may apply to some or all properties on a project. Both options must meet these conditions:

- The project must be included in the currently approved STIP.
- The state must have complied with the public involvement requirements addressed in federal regulations at 23 CFR parts 450 and 771.
- If applicable, the Section 4(f) determination must have been made on these properties.
- If applicable, the Section 106 requirements of the National Historic Preservation Act must have been completed on these properties.
- All other required NEPA clearances must have been completed on these properties.
- The conditions set out in Section 25.44 above also apply to hardship and protective buying.
- For federally-funded projects, FHWA approval for doing a hardship or protective acquisition is required.
- NEPA approval will be secured by following the 2015 Programmatic Categorical Exclusion Agreement.

23 CFR 710.503(c)

- A. **Hardship Acquisition** – A hardship acquisition is initiated by a property owner, not the acquiring agency, when the property owner provides a written statement that:

- Supports the hardship on the basis of health, safety, or financial reasons, and that remaining in the property would pose an undue hardship compared to others.
- Documents the inability to sell the property at fair market value, within a time period that is typical for properties not impacted by the impending project.

Because hardship acquisitions are initiated by the property owner, this advance acquisition option is not practical as a part of WSDOT's project schedule. Note, also, that the state is NOT required by federal regulation to agree to a hardship purchase request.

23 CFR 710.503(d)

- B. **Protective Buying** – In order to do advance acquisition of a property under this option, the local agency must clearly demonstrate to FHWA (on federally-funded projects) that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

Processing Early and Advanced Acquisitions. The decision whether to proceed with one of the early or advance acquisition options will be made by the local agency. In either case, if FHWA approval is required, as discussed in the earlier sections of this chapter, the request for FHWA approval will be processed through the Local Programs ROW section. It is important to remember that the standard acquisition process, as set out in this chapter, applies to early and advance acquisitions. The main difference between standard acquisition and early or advance acquisitions is that the latter often require additional documentation, such as the approval by FHWA of a request to do an advance acquisition.

[49 CFR 24.101\(b\)\(1\)](#) [WAC 468-100-101\(2\)\(a\)](#) [49 CFR 24 Appendix A](#) **.45 Voluntary Acquisition** – A process called “Voluntary Acquisition,” which differs from “Donations and Willing Seller Transactions,” may on rare occasion be appropriate for acquisition of property, but only if all of the following circumstances apply:

- No specific site or property needs to be acquired, although the agency may limit its search for alternative sites to a general geographic area. Where a local agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly.
- The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.
- The local agency will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
- The local agency will inform the owner in writing of what it believes to be the market value of the property.

If these circumstances appear to apply to a project, the Voluntary Acquisition process may apply, but **must** be approved by the LAC before any steps are taken to initiate the acquisition process. If approved, steps to follow for voluntary acquisition are governed by federal and state regulations and shall include:

1. Clearly advise the property owner, in writing, prior to making any offers that the agency will be unable to acquire the property in the event that negotiations fail.
2. Provide the owner with an estimate of the fair market value of the property.
3. Provide relocation assistance to any tenants upon mutual acceptance by the acquiring agency and property owner.

If approved, the local agency must work closely with the LAC on all steps of the voluntary acquisition process.

**Note:** Real estate transactions using this process are subject to real estate excise tax. Also, the statutory evaluation allowance will not be reimbursable, as it is only required for acquisitions made under threat of eminent domain.

**Mitigation sites** – If a mitigation site is required as an environmental commitment for your project it does not meet the test of a voluntary transaction. Your agency is obligated to acquire a mitigation site for the project as failure to do so would likely result in the project becoming a “no go” and is not acceptable to FHWA. This is true even though your project may have multiple properties to choose from to comply with your environmental commitment.

**.46T ROW Funding Estimates** – There are two types of estimates:

1. **Project Funding Estimate (PFE)** is a detailed parcel-by-parcel estimate of total expected right of way acquisition costs and is used to obtain authorization and funding for the project. A PFE is **required** if any appraisals are planned to be waived, and the Agency intends to prepare waiver valuations for any of the parcels on the project. A PFE is based on market transactions (sales) that reflect the current real estate market. Ideally, it is completed by an appraiser, an appraisal reviewer, and a relocation expert. Other ROW staff with appropriate experience, including qualified consultants, may also prepare a PFE.

- A PFE is prepared for every project where right of way will be acquired, unless all properties to be acquired are to be appraised or donated.
- As a minimum, the PFE contains the following information.
  - A parcel-by-parcel list of right of way costs with project summary totals reported on the Right of Way Project Estimate and Cost Breakdown.
  - A project data package including sales, sales map, neighborhood and project description, scope of sales search and, if applicable, damage studies, cost to cure documentation, and Assumptions and Limiting Conditions.

**Note:** The PFE Parcel Worksheet is included in the data package. The information contained in the data package must be current (within six months). In certain situations, the data may be valid longer; however, the Appraiser who prepared the PFE must confirm in writing the data they previously provided, still represents market value as of the current date.

The Agent/appraiser assigned to do the PFE completes the estimate as follows:

- Inspect the project and becomes familiar with the engineering features of the plan.
- View individual parcels to determine the effects of acquisition.
- Prepares a Neighborhood and Project Description which defines existing uses, zoning, trends, transportation and utilities, economic influences, a synopsis of the project and its effect on parcels, and any changes in the aforementioned likely to be caused by the project.
- Gathers sufficient comparable land sales and listings for the various types of parcels and remainders within the project. All sales shall be inspected, photos taken and written up on Market Data Sheets. If the sales are to be used exclusively on parcels where the Agency has determined to waive the appraisal, the sales must be confirmed. In all other cases, a reasonable effort shall be made to confirm all sales. Unconfirmed sales will contain an explanation of the confirmation effort including the parties' names and phone numbers where attempts to make contact were unsuccessful.
- Prepares project and sales vicinity map.
- Prepares PFE Parcel Worksheet for each parcel on the project.
- Includes any applicable damage studies.
- Includes cost-to-cure documentation for estimates and/or bids.
- Includes applicable Assumptions and Limiting Conditions if data Package will be referred to in the preparation of Abbreviated Appraisals.

**Note:** *Right of Way Manual* Section 4-2. 42.1, paragraphs E, F, and G do not apply to local agencies.

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[LPA-210](#)

[LPA-210b](#)

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[Appendix 25.172](#)

[LPA-215](#)

[ROW Section 4-2](#)

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LAG 25.52

2. **True Cost Estimate** can be used only when all parcels are to be appraised or donated. The ROW PFE **must** be used if the agency wishes to make use of the waiver valuation procedure. A True Cost Estimate is a parcel-by-parcel estimate of total expected right of way acquisition costs drawn from the County Assessor's records, from replacement cost schedules for minor site improvements or estimates from local vendors, and is used to obtain authorization and funding for the project; therefore, in many cases the level of expertise required for its preparation may be less stringent than for a PFE. However, if damages to the remainder are severe, particularly in the case of a reduction in the highest and best use of a remainder property, a True Cost Estimate cannot be used as a legitimate measure of the total expected right of way costs. In such a case, a PFE will be necessary. Local agencies are advised to contact their LAC when these types of situations arise.

A True Cost Estimate consists of three parts:

- Worksheet for each parcel to be acquired
- Table summarizing all estimated acquisition costs
- Project description.

**.47 ROW Plan** – A ROW Plan indicating the property required to build and maintain the transportation project is required. A right of way plan is a valuable visual-aid tool for negotiators, appraisers, and attorneys involved in acquisition transactions. It also helps property owners understand why and how their properties are being acquired.

Appendix 25.170

The Local Agency's ROW plan shall be considered approved upon seal and signature of a registered Professional Engineer or Professional Land Surveyor in accordance with [RCW 18.43.070](#) and [RCW 58.09](#). The ROW plan shall contain essential data needed for appraisal, negotiation, right of way certification activities, and illustrate the following information:

- Survey line or centerline for the alignment, including sufficient ties to physically locate the alignment. Please contact the LAC if other acceptable survey practices are proposed to establish the alignment.
- Sufficient information for preparation or verification of legal descriptions of the affected properties and types of property interests to be acquired.
- Width of the right of way (alignment), grade changes, and other design features/details of the construction.
- The property lines in their entirety and owner's names for each affected property, along with all contiguous parcels to the property being acquired and owned by the same owner, the parcel identification number; the calculated area(s) of the existing parcel(s); the areas to be acquired, including any easement areas; and the calculated area(s) of the remainder parcel(s).

It is recommended ROW plans illustrate the following additional information:

- For affected parcels, improvements within 100' feet of the existing ROW, including those improvements that may be damaged by the project (i.e. residences, commercial structures, signs, septic systems including reserve area, wells, driveways, fencing, irrigation systems).
- Vicinity Map showing the project limits.

A draft of the ROW plan should be submitted to the LAC for review and comment prior to its approval by the local agency.

**.48 ROW Phase With Federal Funds** – Prior to the authorization of federal funds for ROW, the following requirements must be met: compliance with Chapter 14, FHWA approval of environmental (NEPA) documents, and the submittal of the following documents to the Region LPE.

[Appendix 43.62](#)

- Local Agency Agreement Supplement.
- Funding estimate of probable ROW costs and expenses broken down by parcel.
- Approved ROW plan (part of Approved Design Documentation).
- WSDOT approved relocation plan (if relocation is required, contact the LAC for assistance).

The obligation of federal funding is the approval (authorization) by FHWA to participate in a share or portion of federally eligible expenditures on an agreed-upon scope of work (also known as a project). This commitment occurs when a project phase or additional funding for a phase is approved and the project agreement is authorized by FHWA. The dollar amount of federal funds approved on the project agreement is known as the obligation of federal funds. Only after the local agency receives written authorization from Local Programs are costs incurred eligible for reimbursement. Once FHWA approval has been obtained for the obligation of funds for the ROW Phase, Local Programs will notify the local agency of authorization to proceed with ROW acquisition. Acquisition activities should not occur prior to the obligation of funds. No acquisition costs are eligible prior to this authorization, except those preliminary ROW costs that are allowable in the PE phase.

**.49 ROW Phase with Local Agency Funds Only** – If federal funds are to be used in any part of the project, or the property is later incorporated into a federally funded project, federal guidelines for acquisition of the ROW must be followed. The local agency must also follow the local agency's approved procedures, which typically requires the LAC to review all offers and supporting data before they are presented to the property owner. **The ROW plan and funding estimate package requirements also apply if federal funds are in any phase of the project.**

[LAG 25.41](#)

**Note:** A PFE is not required unless the local agency intends to use the waiver valuation process for the preparation of AOSs. **The AOSs must be based on the PFE. A True Cost Estimate cannot substitute for a PFE when preparing waiver valuation.**

In order to minimize potential problems which may surface during the certification process, the local agency submits a copy of the ROW plan and Relocation Plan (if applicable) for review/approval before starting the acquisition process. A copy of the ROW plan must be made available at the time of certification.

## 25.5 Appraisal/Waiver Valuation – Administrative Offer Summary (AOS)

[ROW Chapter 4](#)

[49 CFR 24.102\(n\)\(3\)](#)

**Negotiators cannot supervise appraisers, review appraisers, or waiver valuation preparers, unless FHWA approves a waiver of this requirement, and appraisers, review appraisers, or waiver valuation preparers shall not have any interest, direct or indirect, in the property being valued.**

[49 CFR 24.103](#)

[WAC 468-100-102](#)

**.51 Appraisal** – The requirements pertaining to the appraisal of property to be acquired and an explanation of requirements for an acceptable appraisal report are provided in *Right of Way Manual* M 26-01 [Chapter 4](#). If desired, a listing of WSDOT approved fee appraisers and appraisal reviewers is available from the LAC or via a link on the WSDOT Real Estate Services website at [www.wsdot.wa.gov/realestate](http://www.wsdot.wa.gov/realestate).

- [49 CFR 24.103\(d\)](#)  
[WAC 468-100-102\(4\)](#) The appraiser shall be an experienced, qualified appraiser. At a minimum, an appraiser should have a college degree or four years of active experience in the real estate field leading to a basic knowledge of real property interest valuation, or any combination of such experience and college study to provide a total of four years beyond high school graduation. An appraiser who is qualified under WSDOT criteria and on WSDOT's approved appraiser list will be considered qualified for FHWA projects.
- [49 CFR 24.103\(a\)](#)  
[WAC 468-100-102\(1\)](#)  
[49 CFR Appendix 24.103 LPA-217](#)  
[LPA-218](#) The appraiser shall prepare an appraisal report which is a written document containing among other elements, the following:
1. The purpose of the appraisal which includes a statement of the estimated value and the rights or interests being appraised.
  2. The estimate of just compensation for the acquisition. In the case of a partial acquisition, allocate the estimate of just compensation for the property to be acquired and for damages to remaining property in either the report or a separate statement.
  3. The data and analyses (or reference to same) to explain, substantiate, and document the estimate of just compensation.
  4. An adequate description of the physical characteristics of the property being appraised, including items identified as personal property. Local Programs created templates that are available for use but are not required if the local agency has a similar form.
- [49 CFR 24.103\(a\)\(2\)\(i\)](#)
- [49 CFR 24.102\(c\)\(1\)](#)  
[49 CFR 24.102\(f\)](#)  
[RCW 8.26.180\(2\)](#)  
[WAC 468-100-102](#)  
[ROW Appendix 4-1](#)  
[Part 1\(A\)\(f\)](#) **Appraiser/Owner Contact** – Property owners have the legal right to inspect the property with the appraiser. Every effort must be made to ensure that the property owner has been extended that opportunity for a joint inspection. The appraiser shall document in the appraisal report his or her attempts to contact the property owner, which shall include attempts to contact the property owner either by phone and/or in person. The appraiser should be flexible in his or hers schedule in order to accommodate the property owner. If contact cannot be made by telephone, the appraiser should send a letter explaining the need for the inspection and inviting the owner to join in the inspection. The letter shall be sent "Return Receipt" in order to document the attempt for contact.
- [49 CFR 24.102\(c\)\(2\)\(ii\)](#)  
[RCW 8.26.180\(2\)](#)  
[WAC 468-100-102\(1\)](#) **.52 Waiver Valuation (commonly referred to as Administrative Offer Summary (AOS))** – In accordance with federal regulations, an appraisal and appraisal review can be waived in certain cases. To qualify, the just compensation, based on the ROW PFE, must be no greater than the waiver valuation limit as defined in the agency's approved ROW procedures (typically \$25,000), **AND** the acquisition **must be uncomplicated**, with the only damages being minor cost to cure items. The combined estimate of the just compensation plus the cost to cure(s) cannot exceed the agency's approved waiver limits. The PFE must be based on confirmed comparable sales and must reflect the current market.
- For example, if the local agency plans to acquire a strip of land that they estimate is worth \$12,000, but the acquisition will change/limit the owner's ability to develop their property at some point in the future, the Waiver Valuation Procedure **cannot** be used because it is no longer uncomplicated and an appraisal must be prepared by a qualified appraiser.

In such instances where the valuation is waived, just compensation should be based on current comparable sales. All data used to arrive at an estimate of just compensation must be included in the project file. When the waiver procedure is used, it is important that the local agency determines that the offer being made is fair and equitable.

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[LPA-003](#)

In March 2013, WSDOT updated its AOS policy. The local agency must update their Waiver Valuation Procedure, to reflect the new policy. Otherwise, the agency must continue to offer an appraisal for all AOSs regardless of the amount, as specified in their procedures under the prior policy. Any project where acquisitions were initiated under a prior AOS policy must continue with that prior policy until completion of the project's right of way phase.

If the LPA has updated their Waiver Valuation Procedure to reflect the new policy the following applies:

- If the AOS is \$10,000 or less, the offer must state that an administrative offer is being made and an appraisal has not been completed.
- If the AOS is \$10,001 or greater, the offer must state that an administrative offer is being made, that an appraisal has not been completed, and an appraisal will be prepared if requested by the property owner.

Waiver Valuation (AOS) Value Limits	
Condition A: \$10,000 or Less	Condition B: \$10,001 to \$25,000
No requirement to offer to provide property owner with an appraisal.	Offer letter must include provision that the agency will provide an appraisal at the property owner's request.

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[Section 25.51](#)

Under Condition B, if the owner requests an appraisal, the local agency **is required** to provide and pay for one that meets the standards.

## 25.6 Appraisal Review

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[49 CFR 24.104](#)

[WAC 468-100-103](#)

[ROW Chapter 5](#)

The reviewing appraiser should be knowledgeable of the property values in the project area. The depth of review should be in direct relationship to the difficulty of the particular appraisal. The reviewing appraiser must be either a WSDOT review appraiser, on the approved list of review appraisers maintained by WSDOT, or an employee of the acquiring local agency, who is authorized by their approved ROW procedures to review appraisals. To qualify as an agency review appraiser, an individual must, at a minimum, be a Certified General Appraiser with the Washington State Department of Licensing and have successfully completed at least one appraisal review training class approved by WSDOT.

The reviewing appraiser shall, at a minimum, complete a desk review of all appraisals. The local agency and/or reviewing appraiser may elect to complete a field review in lieu of a desk review. A field review shall include inspection of the subject property and all of the comparable sales used in determining the fair market value. All complex appraisal assignments shall be reviewed under a field review.

The reviewing appraiser shall examine the appraisal reports to determine that they:

1. Are complete in accordance with this manual and contain the criteria required by [Right of Way Manual Appendix 4-1](#) Appraisal Guide.
2. Follow accepted appraisal principles and techniques in the valuation of real property interest in accordance with existing state law.

3. Include consideration of compensable items, damage, and benefits, but do not include compensation for items non-compensable under state law.

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**LPA-214b**

The reviewing appraiser shall place in the parcel file a signed and dated certification of value setting forth:

1. An estimate of just compensation including, where appropriate, the allocation of compensation for the property acquired and for damages to remaining property.
2. A listing of the buildings, structures, fixtures, and other improvements on the land which were considered part of the property to be acquired.
3. If applicable, a statement that there is an uneconomic remnant/remainder, and the value of the remainder.
4. A statement that the reviewing appraiser has no direct or indirect present or future interest in such property or in any monetary benefit from its acquisition.
5. A statement that the estimate has been reached independently, without collaboration or direction, and is based on appraisals and other factual data.

**Please Note:** A consulting firm may complete the appraisal and the appraisal review as long as the reports are completed independently. In addition, in order to avoid a conflict of interest the consultants performing the acquisition/negotiation cannot be involved in the appraisal and appraisal review process.

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**49 CFR 24.102(k)**

**RCW 8.26.180(9)**

**RCW 47.12.160**

**ROW Section 5-5.2**

**ROW Section 6-1.2.F**

**ROW Section 6-11.1**

**.61 Uneconomic Remainders** – An uneconomic remainder is defined as a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner’s property, and which the agency has determined has little or no value or utility to the owner.

For partial acquisitions, the review appraiser determines (if local agency staff) or recommends (if consultant) whether the remainder is uneconomic. If the remainder will no longer have utility to the owner, and the **local agency determines** that it is uneconomic, the local agency must offer to purchase the remainder from the property owner.

Detailed instructions regarding the review appraiser’s responsibilities for reporting and documenting uneconomic remainders can be found in the ROW Manual. Please note, it is WSDOT’s policy that even though a parcel may be considered to have little or no utility or value in the “before” situation, when an acquisition leaves a remainder, that remainder should be declared an “uneconomic remnant”. This step is not required by federal regulations. If your agency decides to follow WSDOT policy, it must apply it uniformly on the entire project.

## 25.7 Agency Concurrence for Setting Just Compensation

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**49 CFR 24.102(d)**

**RCW 8.26.180(3)**

**ROW Section 6-1.2.B**

**LPA-214b**

It is the responsibility of the local agency to set just compensation. This can be done by adding a line to the bottom of the review appraiser’s certificate as shown on the Local Agency Certificate of Value, to the bottom of the Administrative Offer Summary (AOS), or by stating the same information in a separate memo. In any case, the statement must be signed and dated by an employee of the agency who has approving authority **prior** to the time the offer is made. When a right of way plan revision occurs, a new AOS, appraisal and/or Certificate of Value may be required.

Before initiating negotiations for the acquisition of real property interests, the local **agency** shall establish the just compensation which **shall not** be less than the approved appraisal of the property and shall make a written offer to acquire in that amount. Appraisals are not required if an AOS has been prepared or if the owner has indicated a willingness to donate the ROW after being informed of their right to receive just compensation. If a waiver valuation was used to set just compensation, the negotiator must notify the property owner that they can request an appraisal be prepared in accordance with the agency's approved Waiver Valuation Procedure. (The threshold for offering an appraisal depends on the Agency's approved Waiver Valuation Procedure in place at the time of the offer). The local agency is responsible for providing and paying for this appraisal.

## 25.8 Title

[ROW Chapter 8](#)

The agency will acquire evidence of the condition of title for all properties from which real property interest rights are to be acquired. It is suggested that a preliminary title report be ordered from a title company, and the title to the property acquired cleared so that a policy of title insurance can be issued showing title vested in the agency subject only to those exceptions which can reasonably be accepted. If a title company is not used to provide this information, the acquisition file must include sufficient documentation to validate the signatories on the instruments and show that the interest acquired is free from unreasonable encumbrances.

Special care should be taken to insure that the parties shown as the vested owners by the title evidence are named correctly in the conveyance instruments, and that the parties signing are the same or have authority to sign. The notary acknowledgement form (jurat) should be appropriate for the status of the granting party.

In general, the elements necessary to acquire the needed real property interest(s) are:

1. Acquisition instruments signed by all parties with an interest in the fee title.
2. Releases from mortgages and deeds of trust. If the local agency determines that it wants to accept title subject to a monetary lien, the local agency should look to [Chapter 8](#) of the [ROW Manual](#) for guidance as to informing the owner of their potential risks.
3. Releases of encumbrances, such as easements, which adversely impact the rights being acquired.
4. Releases of priority liens, such as materialman's liens, judgments, state tax liens, and federal tax liens.

## 25.9 Negotiations

[ROW Chapter 6](#)

[Exempt](#)

[RCW 18.85.151\(6\)](#)

[RCW 18.85.081](#)

**.91 Qualifications** – For local agency staff to be approved to acquire property without direct supervision by the LAC, they must have either an Associate Degree in real estate or a Bachelor Degree or equivalent experience. In addition, they must have two years full-time experience in real estate acquisition, sales leasing, appraisal, title, escrow, or property management. One year of experience must be in eminent domain acquisition performed according to the provisions of the Uniform Act. Additional experience in eminent domain acquisition can replace education on a year-for-year basis.

Local agencies using staff to negotiate who do not have the necessary qualifications must work closely with the LAC as explained in the Procedures Approval letter.

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RCW 18.85.011

If a local agency uses a consultant fee negotiator, the consultant must meet the applicable state licensing requirements. At a minimum, this must be a current, valid real estate salesperson's license issued by the State of Washington. Consultant fee negotiators must also have qualifications and experience generally equivalent to those for local agency staff negotiators.

**.92 Separation of Functions** – A separation of functions maintains the integrity of the acquiring agency's transactions. Thus, the appraisal, appraisal review, and negotiations for a parcel are performed by three different persons. It is recognized that the use of two separate individuals as appraiser and negotiator on a low-value acquisition can be both difficult and expensive. The use of a single qualified individual to both, appraise (or prepare an AOS) and negotiate a parcel is permitted where the value of the acquisition is \$10,000 or less. It should be noted that the appraisal shall be reviewed prior to negotiations, and the review appraiser shall be neither the appraiser nor the negotiator.

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49 CFR 24.102(d)49 CFR 24.102(e)RCW 8.26.180(3)ROW Section 6-1.2.C

**.93 Offer/Summary Statement** – Upon initiation of negotiations, the local agency shall provide the owner of real property and/or property rights to be acquired with a summary of the appraisal (they can provide the appraisal to fulfill this requirement), or if an AOS a copy of the comparable sales data, a written offer letter, including a summary of the basis for the amount it has established as just compensation for the proposed acquisition. At a minimum the offer letter shall include the following:

1. The amount established as just compensation.
2. A statement explaining that the offer is based either on an appraisal made by a qualified appraiser and reviewed by a qualified Review Appraiser, or an AOS under the Waiver Valuation Procedure. The local agency's current approved Waiver Valuation Procedure will determine their obligations for offering an appraisal if one was not performed.
3. Identification of the real property to be acquired, including the estate or interest being acquired.
4. Identification of improvements and fixtures considered to be part of the real property to be acquired.
5. The amount of just compensation for the real property to be acquired and any amount included for damages to remaining real property shall be separately stated. If the local agency does not provide a copy of the AOS/Appraisal then items addressed in the valuation that will be handled during construction shall be explained in the offer and a construction memo signed.

When a right of way plan revision occurs, a new AOS, appraisal and/or Certificate of Value may be required, especially if the acquisition area or the property interests to be acquired changes.

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LPA-350

The local agency should review their current approved Waiver Valuation Procedure to confirm that the correct language is being used in the offer letter.

Section 25.1023 CFR 710.105(b)23 CFR 710.305(d)23 CFR 710.50523 CFR 710.50749 CFR 24.108RCW 8.26.180(10)WAC 468-100-106ROW Section 6-1.2.JLPA-383LAG 25.21

**.94 Donation (see Also Section 25.10 Donated Property)** – A donation may be accepted only after the owner has been informed in writing and has waived, in writing, their right to just compensation, and has released the local agency from its obligation to have the property appraised. This applies to individuals, businesses, corporations, other private entities, and non-federal government agencies (state, local and tribal governments). Non-federal governmental agencies must follow their laws and regulations relative to the conveyance of property and make sure they have the legal authority to donate. If a donation is accepted in advance of NEPA clearance, it is considered an early acquisition.

**.95 Dedication** – ROW obtained through normal zoning, subdivision, or building permit procedures may be incorporated into a federal aid project without jeopardizing participation in other project costs, provided such dedication does not constitute an unconstitutional taking. Dedicated land incorporated into the roadway facility is considered part of the existing ROW. As such, dedicated land is not required to be included in a right of way certification.

RCW 8.25.020

**.96 Statutory Evaluation Allowance (SEA)** – The local agency must notify the property owner of the availability of a SEA not to exceed \$750 to help defray the owner's expenses actually incurred in evaluating the agency's offer. Reimbursement made to the property owner shall not be delayed due to negotiated settlement or project delays.

The SEA requirement only applies to offers made under the threat of eminent domain. Therefore, when a local agency's offer is NOT under threat of eminent domain, either by choice or regulation (such as early/advance or voluntary acquisitions), the local agency does NOT have to notify the owner of the \$750 SEA. A local agency is not prohibited from offering the \$750 SEA on non-eminent domain offers; however, FHWA will not participate in the cost. Local agencies must be consistent in their policy on whether to offer the \$750 SEA to property owners, and apply it uniformly.

49 CFR 24.9WAC 468-100-009LAG 25.16

**.97 Documentation** – A diary or negotiator's log must be maintained for each parcel wherein each individual involved in a negotiation, a relocation, or a property management function shall enter and initial a suitable description of each contact and other information concerning that function. See [Section 25.15](#) for additional direction on preparing diaries. Upon request, the LAC will provide explanations and examples of adequate records.

When negotiations are complete, the negotiator shall keep in the project file a signed statement for each parcel that:

1. The written agreement embodies all considerations agreed to by the negotiator and the property owner.
2. The negotiator understands that the acquired property is for use in connection with a federal aid transportation project.
3. The negotiator has no direct or indirect interest in the property or in any monetary benefit from its acquisition, at present or in the future.
4. The agreement has been reached without any type of coercion.

**.98 Negotiations by Mail** – If no relocation is involved, the local agency may conduct ROW negotiations as follows:

1. Mail to the owner the fair-offer letter, a summary statement (explains nature of acquisition, conditions affecting remainder after construction, and other pertinent details which would have been explained in a face-to-face meeting with owner), the document of acquisition (deed, easement, or other document required for signature), property plat or sketch showing acquisition limits and effects on any remainder, and a copy of an acquisition brochure.
2. Within a reasonable period of time, typically about two weeks, make a follow-up phone call (documented in the diary). Answer questions or, if owner requests it, make an appointment for personal contact.
3. Follow normal procedures for further negotiations.

**.99 Acquisition of Contaminated Properties** – The local agency should take reasonable care to determine if properties needed for a project are contaminated. In the case where properties being acquired by the local agency will become part of a state highway, the local agency must involve WSDOT in the acquisition process as early as possible to ensure that the property will be in an acceptable condition for WSDOT to accept the transfer of ownership. The local agency should contact the LAC if they are considering acquisition of contaminated properties.

**.100 Global Settlements** – A global settlement is the combining of just compensation and relocation benefits into a lump sum settlement.

Because global settlements could compromise the entire project's federal aid eligibility, FHWA will not accept a project ROW certification if it includes a global settlement. The local agency should contact the LAC if they are considering global settlements.

**.101 Functional Replacements** – When publicly-owned real property, including land and/or facilities, is to be acquired for a federal aid highway project, in lieu of paying the fair market value for the real property interest, the local agency may provide compensation by replacing the publicly-owned real property with another facility which will provide equivalent utility.

The local agency must contact the LAC if they are considering a functional replacement. **FHWA will be involved in this process and will have final approval.**

[23 CFR 710.105\(b\)](#)

**.102 Option to Purchase** – One of the streamlining techniques the new regulations specifically provide for is the use of options to obtain a contractual right to acquire an interest in land. The use of an option to purchase can facilitate earlier acquisition of a property interest and, in some cases, may be structured to forestall development of the land until a clearly determined need of that property for the project has been established. This option also provides for the purchase of a right to temporarily control or restrict development of the property for a defined period. The use of options or purchase of temporary rights can save both time and costs for the project.

## 25.10 Donated Property

Section 25.94

LPA-383

Transportation Needs &  
You Brochure

23 CFR 710.105(b)

23 CFR 710.305(d)

23 CFR 710.505

23 CFR 710.507

49 CFR 24.108

RCW 8.26.180(10)

WAC 468-100-106

ROW Section 6-1.2.J

Donations of right of way can be accepted only after the owner (includes non-federal government agencies) has been fully informed by the local agency in writing of their rights to receive just compensation and has released (in writing) the local agency from its obligation to have the property appraised. A copy of the donation letter issued to the property owner informing them of their rights available and the donation letter acknowledgment signed by the owner must be included in each parcel file. It is acceptable for a local agency to have an informational discussion with a property owner prior to the initiation of negotiations and start of the appraisal process to see if a property owner is interested in donating property. This is acceptable as long as the local agency does not enter into negotiations or tell a property owner that the project will not move forward if they do not donate. Coercion is not allowed. If a local agency elects to have an informational meeting, they should provide an informal letter to the property owner explaining the donation process in general terms and provide the property owner with the Property Needs and You brochure explaining all of the compensation and benefits they are entitled to receive if they choose not to donate.

The donation clause must be included in the conveyance instrument. Section 323 of 23 USC provides for using the value of donated lands as part of the match against a local agency's contribution to the project. Certain conditions need be met:

- The credit may only be applied to a federal aid project if federal financial assistance was not used in any form to acquire the land. Credit to the matching share may not exceed the matching share of costs for that project and excess costs may not be utilized on other projects.
- The donation must be related to the project requiring the donated land.
- Donations of privately-owned real estate made after April 2, 1987, and subsequent to NEPA clearance, are eligible for credit purposes. If a donation is accepted prior to the initiation of NEPA you will need to contact the LPE to determine if additional information is required. The value of publicly-owned real estate donated after June 8, 1998, is eligible for match credit.

## 25.11 Administrative Settlements

49 CFR 24.102(i)

ROW Section 6-12

The Uniform Act requires that "The head of a federal agency shall make every reasonable effort to expeditiously acquire real property interests by negotiation." Negotiation implies an honest effort by the acquiring local agency to resolve differences with property owners. Additionally, the legislative history of the Uniform Act indicates that offers can be flexible, and there is no requirement that they reflect a "take it or leave it position." Negotiations should recognize the inexact nature of the process by which just compensation is determined. Further, the law requires an attempt by local agencies to expedite the acquisition of real property interests by agreements with owners and to avoid litigation and relieve congestion in the courts.

In addition to the mandates of the Uniform Act, there are significant cost savings which can be realized through an increased use of administrative and legal settlements. Cost savings are in the areas of salaries, witness fees, travel, per diem, court costs, etc.

FHWA and WSDOT encourage local agencies to carefully consider and maximize use of administrative settlements in appropriate situations.

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Section 25.10

An administrative settlement or stipulated settlement is a negotiated settlement of a ROW acquisition case in which the local agency has administratively approved payment in excess of fair market value as shown on the local agency's approved just compensation. Since relocation benefits by regulation cannot be waived, care should be taken not to include "relocation" in a blanket settlement (or global settlement) as the local agency may still be required to pay additional benefits as part of the relocation program.

1. **Any administrative settlement which exceeds the fair market value must be documented, thoroughly justified, and the rationale set forth in writing in order to be eligible for federal aid funds.** The extent of written explanation is a matter of judgment and should be consistent with the circumstances and the amount of money involved. If the local agency has any doubt as to eligibility, it should obtain prior approval from LAC.
2. The local agency shall document the following and make it available for review by LAC if it is not already part of the agency's approved procedures:
  - a. Identify the responsible official who has the authority to approve administrative settlements.
  - b. Describe the procedure for handling administrative settlements.
3. The designated local agency representative may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the designated official must give full consideration to all pertinent information. The settlement must include an analysis of the circumstances of each individual parcel and provide justification as to why the administrative settlement is in the public's best interest. This documentation shall be completed and approved by the designated local agency official prior to payment(s) being made. The list below is a sample of items to be considered for an administrative settlement, and should **not** be used as a template.
  - The negotiator's recorded information, including parcel details, estimates, bids, research information, all available appraisals, including the owner's and the owner's rationale for increased compensation. This is the most important part of the justification.
  - Recent trends in court awards in cases involving similar acquisition and appraisal problems and the length of time it takes to get on the court's schedule.
  - A statement can be made that condemnation will take additional time and money, but do not attach a dollar amount to the statement since it would be speculative. You should include items such as updating the appraisal for trial, pretrial, conference, staking of right of way, attorney's expenses, and witness fees (appraisers, consultants, etc.) will be additional incurred costs. You should not speculate about increased project costs resulting from a delay. You could try to quantify your administrative costs resulting from condemnation proceedings such as additional staff time.
  - Describe the trial risks based on experience in the particular jurisdiction (e.g., county, city).

**Note:** Specific information about the parcel, including copies of appraisals, estimates, bids, research information, etc., **must** carry the most weight in the justification.

For additional guidance, reference [Appendix 25.173](#) and the *Right of Way Manual* Section 6-12. Local agency staff responsible for writing and approving Administrative Settlements should take the web based training on how to write an effective administrative settlement. The course can be accessed by clicking from our Local Programs ROW Services Webpage using the following link: [www.wsdot.wa.gov/LocalPrograms/ROWServices/Training.htm](http://www.wsdot.wa.gov/LocalPrograms/ROWServices/Training.htm)

The course is estimated to take 1 to 2 hours to complete.

## 25.12 Relocation

### [49 CFR 24 Subpart C](#) [ROW Chapter 12](#)

Local agencies that have trained staff and are approved by WSDOT through the procedures process to provide relocation services may do so. All other local agencies should contact their LAC for advice on contracting with private consultants. WSDOT does not maintain a list of qualified relocation consultants.

### [49 CFR 24.205\(a\)](#) [RCW 8.26.065\(1\)](#) [WAC 468-100-205\(1\)](#) [ROW Section 12-4.2](#)

If a project includes relocation, the local agency must submit a relocation plan to WSDOT for approval **prior** to starting ROW activities. If there are federal funds in the ROW Phase, the relocation plan must be approved before ROW funding can be authorized.

### [LAG 25.43](#)

To maintain a project's federal aid eligibility, a relocation plan needs to be submitted and approved prior to starting ROW activities, even if there are no federal funds in a ROW Phase. **This is also true in the case of early or advanced acquisition.**

You may contact WSDOT for sample relocation plans or refer to *Right of Way Manual Chapter 12* for guidance. Contact the LAC for assistance in preparing relocation plans and carrying out relocation activities.

## 25.13 Right of Way Certification

Spot check reviews are a proactive measure intended to lessen the risk that local agencies engage in improper practices that result in irreversible problems, compliance issues that could delay, stop ROW certification, or risk federal funding on current and/or future federal aid projects. Such risks are reduced by elevating the local agency's awareness of the LAC's project monitoring and by providing an early opportunity for the LAC to help the agency identify problems before they become compliance issues. The LAC acquisition file review process is intended to ensure that the agency has in fact completed the ROW acquisition process in compliance with federal regulations before we make our certification to FHWA. The major difference between a spot check review and a certification review is that the project is not complete, so the focus is on the actions taken by the agency up to the point of spot check review for compliance with the URA. The benefit of performing a spot check review, is regulatory compliance issues can often be caught early enough in the process that corrective actions may be resolved at the LAC level. Another benefit is the prevention of regulatory compliance issues during the certification review.

The LAC will perform spot check reviews on selected federal aid or federal aid eligible projects. The number of spot check reviews is dependent upon the scope of the project, complexity of acquisitions, the agency's level of experience, and past performance. Spot

check reviews are not required on all projects, unless required by the local agency's Approved ROW Procedures (as specified in the cover letter by Local Programs). However, the LAC is required to perform spot check reviews on active projects of those local agencies having past performance problems, required by ROW Procedures, or if the local agency lacks sufficient experience acquiring ROW under the URA.

Prior to ROW certification, the local agency must ensure that the ROW plans were reviewed and approved as part of the design approval, and are consistent with the PS&E (see [Appendix 43.62](#)).

[23 CFR 635.309\(c\)](#)

After ROW acquisition has been completed and about two months before the federal aid project is to be advertised for contract, the ROW certification on agency letterhead must be submitted to the LPE. FHWA does not formally approve certifications on non-Interstate projects as they have delegated approval of all certificate 1, 2, and conditional 3s (time-based) and excepted parcel 3s on non-Interstate projects to WSDOT. Local Programs will allow local agencies, with proper justification and Local Programs approval, to extend the time-based cert 3 from bid opening to issuance of the Notice to Proceed (NTP) to the contractor. For all non-Interstate Certificates, the actual certification date for federal aid projects is the date on the Local Programs Certification Concurrence Letter sent to FHWA. Local Programs Concurrence is required prior to advertisement. For Interstate projects, FHWA will only approve Excepted Parcel Certificate 3s, and the actual certification date is the FHWA approval letter date. Please note the approval process for ROW certifications for local agencies is different from what appears in Chapter 17 of the ROW Manual. ROW certification is a requirement for construction authorization. Since local agencies are expected to go to ad within six weeks of construction authorization (See [Section 22.1](#)), ROW certification should not occur too far in advance of the anticipated ad date.

The certification provides the following information and assurances.

1. Sufficient property rights to construct, operate, and maintain the facility as shown on PS&E has been acquired.
2. Right of way has been acquired in accordance with Uniform Act requirements.
3. Relocation assistance has been completed in accordance with the Uniform Act and meets the requirements of [Right of Way Manual Chapter 12](#).
4. Properties acquired in advance of NEPA Clearance (including donations) shall be identified by parcel number. (This information could take the form of an address or a county tax ID if parcel numbers are not assigned.)

[23 CFR 635.309\(c\)\(1\)](#)

For specifics on certification types, definition, procedures, requirements, and examples, see [Right of Way Manual Chapter 17](#). **Note:** Under federal regulation, a Certificate 1 can be utilized by a local agency if the agency obtains a negotiated or stipulated possession and use agreement. This is different from the procedures in Chapter 17 of the ROW Manual. In addition, certificate 2s must be updated to a certificate 1 in order for the agency to have all the necessary rights to operate and maintain the facility.

If additional property rights are needed after the certification of the project, any subsequent acquisition must be certified. Please note provisions should be made to ensure the contractor does not enter onto any property until the local agency has legal and physical possession, and the project has been re-certified.

## 25.14 ROW Certification vs URA Compliance

### Section 25.2

Right of Way Acquisition Procedures apply to all federal aid projects regardless of whether the project is to be certified. For example, if the condition of the agency's ROW Procedures requires the LAC to review parcel files prior to making first offers, your agency must comply.

### 2 CFR 200

### Appendix 25.171

Based on changes to federal requirements, specifically the implementation of [2 CFR 200](#), in order for local agencies to maintain federal eligibility of federal funds utilized in a project prior to construction, certain federal requirements must be met even though the project is being constructed using local funds. Compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) is mandatory.

RW Documentation Requirements Based on Funding Source When a Project has RW Acquisition	ROW Certificate	URA Compliance
FHWA Funds in PE Phase		X
FHWA Funds in RW Phase	X	
FWHA Funds in CN Phase	X	
100% Local Funds Only – Federalized by NEPA		X
100% Local Funds Only – Project involves Interstate		X

### ROW Certificate – Construction Authorization (prior to advertising for construction bids)

### 23 CFR 635.309(b)

### 23 CFR 635.309(c)

### 49 CFR 24.101

### ROW Chapter 17

Per [23 CFR 635.309\(b\)](#) and [\(c\)](#), the ROW certification procedure for federally-assisted highway projects identifies the acquisition status of necessary ROW for the purpose of advancing a project to construction. This regulation is specific to construction authorization only and is the only time that a ROW certification is issued by Local Programs/FHWA. Title 23 requires that acquiring local agencies comply with [49 CFR Part 24](#). The requirements of [49 CFR 24.101](#) apply to any acquisition of real property for programs or projects where there is federal financial assistance in any part of project costs. The phase program or project means any activity or series of activities undertaken by a Federal Agency or with federal financial assistance received or anticipated in any phase of an undertaking in accordance with the federal funding agency guidelines. The certification process outlined in [Chapter 17](#) of the [ROW Manual](#) must be followed if federal funds are planned in the Construction or ROW Phase of the project.

### URA Compliance – Non-Construction Authorization

If federal funds of any amount are used in the PE phase the project is required to follow the URA. This also applies to projects which have been federalized by NEPA or involve Interstate when local funds are used. For example, a project that has been split into two or more separate projects, but is covered by one NEPA document is required to follow the URA when any portion of the overall project involves federal funding.

### 49 CFR 24.101

Title 23 requires that acquiring agencies comply with [49 CFR Part 24](#). The requirements of [49 CFR 24.101](#) apply to any acquisition of real property for programs or projects where there is Federal financial assistance in any part of project costs. The phase program or project means any activity or series of activities undertaken by a Federal

Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines.

In addition to the URA, the local agency must adhere to additional ROW requirements listed in [23 CFR 710](#), environmental requirements, Buy America, and Title VI requirements.

**URA Compliance is required if:**

- Federal funds in the PE Phase only
- Locally funded but federalized by NEPA
- Locally funded but involves interstate

**ROW Project Compliance Reviews (CR):**

- In order to be reasonably certain that local agencies are administering FHWA funds in accordance with the Local Agency Guidelines; WSDOT may perform reviews on selected local agency projects that are locally funded but involve interstate, locally funded but federalized by NEPA, or federal funds are only in the PE phase.

**Note:** If a local agency later seeks federal funding in the ROW or CN phase a ROW certification will be required.

## 25.15 Property Management

[23 CFR 710.403\(e\)](#)

If using FHWA funding, the acquiring agency shall establish property management policies and procedures that will assure control and administration of ROW, excess lands, and improvements acquired. FHWA does not prescribe how local agencies track income or expenditures from the sale or lease of excess real property acquired with federal funds. However, the federal share of income derived from the sale or lease of property that was acquired with federal fund can ONLY be used for activities permitted under Title 23.

In an audit, the local agency would be expected to produce documentation to show they are in compliance with the regulations. These procedures shall establish:

1. Property records showing:
  - a. An inventory of all improvements acquired as a part of the ROW.
  - b. An accounting of excess properties acquired with FHWA funding.
  - c. An accounting of the property management expenses and the rental payments received.
  - d. An accounting of the disposition of improvements and the recovery payments received.
2. Methods for accomplishing the clearing of ROW when such clearance is performed separately from the control for the physical construction of the project.
3. The methods for employing private firms or public agencies for the management of real property interests.
4. The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

[23 CFR 710.403\(d\)](#)  
[ROW Chapter 11](#)

If the local agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the local agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

Property management activities shall be handled in a manner consistent with the public interest and designed to reflect the maximum long-range public benefit.

The local agency is responsible for the preservation of the improvements and for reasonable safety measures when it has acquired ownership and possession of the property.

[23 CFR 710.409](#)  
[LPA-407](#)

Should rights of way, including uneconomic remnants, acquired with FHWA funds become excess, they may be disposed of (sale, lease, easement, etc.) only with the approval of Local Programs. To request approval, the local agency must complete and submit form [LPA-407](#). Once approved, the local agency will receive a written notification from the Local Programs Right of Way Manager that they can move forward with their disposal process.

[23 CFR 710.403\(e\)](#)

If the disposal is to a private party, the local agency must determine fair market value through the valuation process. FHWA will either be credited for its share of the net proceeds of the sale or lease payment, or the local agency may use the federal share of the net proceeds for activities eligible for funding under Title 23 of the United States Code for transportation purposes. A disposal may be made to a governmental agency for a continued public highway use without charge, and no credit to FHWA is required; however, a reversionary clause is required in the deed per [23 CFR 710.403](#).

FHWA approval is required for disposal (sale, lease, easement, etc.) of any rights of way or uneconomic remnants sold at less than fair market value. The local agency will need to provide a written request showing the exception is in the overall public interest based on social, environmental, or economic benefits, or is for a non-proprietary governmental use. Upon approval, the local agency will include a reversion clause in the deed.

[23 CFR 710.105\(b\)](#)

Federal regulations provide for the use of airspace for non-highway purposes above, at, or below the highway's established gradeline, lying within the approved ROW limits. Allowing a ROW Use Agreement for recreational activities could result in the parcel becoming a protected 4(f) resource; costs associated with mitigating impacts to these resources will not be eligible for federal aid participation. The airspace may be put to various public and private uses, such as parks, play areas, parking, trails, etc., as long as it does not interfere with the roadway operations and does not create a safety hazard to the traveling public. Any such lease will need to describe what activities are allowed on the land.

Where an acquiring local agency has acquired sufficient legal right, title, and interest in the ROW of a highway on a federal aid system to permit the use of certain airspace, the right to temporary or permanent occupancy or use of such airspace may be granted by the state subject to prior FHWA approval. If the use of airspace is contemplated, the LAC should be contacted for more detailed policies and procedures that must be considered.

Upon disposal of ROW by deed, license, lease, permit, easement or similar instrument, the local agency shall include the required Title VI lease/deed provisions, as outlined in [Chapter 28](#) (Exhibit 2C).

## 25.16 Diaries

[49 CFR 24.9](#)

[WAC 468-100-009](#)

[ROW Chapters 3, 6, 8, 9, 12, and 13](#)

**.161 General** – The diary (also can be referred to as a negotiator’s log) is one of the most important elements of an acquisition or relocation file. It is crucial that it be accurate and complete, for it is frequently the only document in a file that explains how a difficult or complex real property interest transaction proceeded. Diaries are also often the only written documentation that is available to show that ROW transactions were done in compliance with the Uniform Act and [49 CFR Part 24](#). Therefore, diaries need to provide a complete record of the transaction. They need to be well organized and factual, and they should be written to be understandable by someone unfamiliar with the transaction. Also, they should reference any appropriate documents in the file such as brochures provided to property owners or estimates obtained to support an administrative record.

Each diary entry shall clearly show the month, day, and year of the contact; the name of the individual who made such a contact; how the contact was made (i.e., in person or by phone) and the name(s) of the individual(s) contacted. Each diary entry shall provide a summary of the contact. It is not sufficient to enter a simple posting of events as they occurred. For example, merely recording that the agent presented an offer or that “discussions were held” on a given date is not sufficient. The entry should indicate, at the least, where the event took place, what questions the owner asked and what answers the agent supplied. These elements are at the very heart of the negotiation process, and when an acquisition becomes difficult or negotiations break down, a well written diary may be the most important document protecting the acquiring agency’s interests.

Multiple contacts should not be combined into one diary entry. These entries need to be made as soon as possible to ensure accuracy. Upon completion of activity entry, the specialist should initial each entry. Electronic diaries are recommended. Once a diary is complete, it must be dated and signed at the end.

Diary entries need to be limited to a recitation of the facts because the diary is subject to the rights of discovery by all parties in any court proceeding or appeal case. **All persons** who participate in negotiations with a property owner to acquire real property interests, whether a staff or consultant agent/negotiator, a member of an agency’s administrative or executive branch, or an agency’s attorney, shall maintain an appropriate diary or log of such activities and discussions with the property owner.

A collection of emails pertaining to the acquisition of a parcel does not constitute a diary. Information taken directly from email correspondence often contributes to a good diary, but care should be taken to exclude extraneous information.

If during the LAC Certification Review, it becomes necessary for a Diary to be corrected, amended, or for additional information to be added this must be accomplished through a Supplemental Diary. The original Diary shall NOT be altered in order to correct erroneous or add missing information.

## 25.17 Oversight of Consultants Hired to Perform ROW Activities

[23 CFR 710.201\(a\)](#)

[23 CFR 710.201\(b\)](#)

[23 CFR 710.201\(h\)](#)

[LAG 25.2](#)

The local agency (typically the person approved to perform the “Program Administration” function on the Approved ROW Procedures) is responsible for overseeing the delivery of the ROW Program on federal aid roadway projects for their local agency. The local agency must ensure ROW activities are carried out in compliance with federal and state laws, regulations, policies and procedures; therefore the local agency must be involved in all conversations between the LAC and the consultant. Local Programs’ obligation is to the project owner, not the consultant so any guidance provided will be to the local agency.

Oversight of ROW consultants includes, but may not be limited to:

- Early involvement with LAC
- Use of consultant contract template approved by Local Programs;
- Management of scope of work;
- Management of ROW contracts;
- Management of and QA/QC deliverables (ROW plans, PFEs, relocation plans, administrative settlement justifications, recommendations/requests for payment, files, etc.);
- Review and approval of actions and decisions recommended by consultants; and
- Overall responsibility for decisions that are outside the purview of consultant functions.

[LAG Chapter 31](#)

The following checklists are available as a tool for the local agency to use in the oversight of the consultant’s work product.

- LPA020 – Project Oversight Review Checklist
- LPA021 – Parcel Oversight Review Checklist
- LPA022 – Relocation Oversight Review Checklist

## 25.18 ROW Training

The LAC provides/facilitates annual structured training open to all LPAs and consultants that address the requirements for a federal aid project. If requested or the LAC determines the need, the LAC provides one-on-one or group project-specific training to LPAs on the URA and the ROW process on federal aid projects and/or any projects wishing to preserve federal aid eligibility. This training should be tailored for the project according to the local agency’s approved procedures and the ROW acquisitions needed for the project. For instance, if the local agency is using consultants, the training should be for the local agency’s management approval activities (e.g., agency approval of just compensation, agency approval of administrative settlements, going to condemnation).

## 25.19 Document Retention

[23 CFR 710.201\(e\)](#) The acquiring local agency shall maintain adequate records of its acquisition and property management activities. Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with [23 CFR 710.201\(e\)](#) and 49 CFR Part 24. These records shall be retained at least three years after construction is authorized.

If a local agency acquires a property or property interests under Early Acquisition procedures and later wishes to incorporate the property into a federally funded project, the local agency will need to maintain records for that parcel so they do not jeopardize federal participation on the project or their ability to incorporate the property into their project.

## 25.20 Appendices

**Cautionary Note:** Please contact your LAC prior to modifying any templates in the appendices.

<a href="#">25.170</a>	Right of Way Plan Checklist
<a href="#">25.171</a>	ROW Certification vs URA Compliance Case Studies
<a href="#">25.172</a>	Sample Neighborhood Description
<a href="#">25.173</a>	Vacant
<a href="#">25.174</a>	Determining Whether Land or Property Rights or Interest are Needed
<a href="#">25.175</a>	Determining the Type of Property Rights Necessary
<a href="#">25.176</a>	No ROW Needed Verification Checklist
<a href="#">25.177</a>	FHWA Early/Advanced Acquisition Options and Requirements Chart
<a href="#">25.178</a>	Federal Aid Requirement Checklist
<a href="#">25.179</a>	Acquisition Process Flowchart
<a href="#">25.180</a>	LPA Certification Worksheet – Certificate 1 Sample
<a href="#">25.180a</a>	LPA Certificate 1 Worksheet – Instructions
<a href="#">25.181</a>	LPA Certification Worksheet – Certificate 2 Sample
<a href="#">25.181a</a>	LPA Certificate 2 Worksheet – Instructions
<a href="#">25.182</a>	LPA Certification Worksheet – Certificate 3 Sample
<a href="#">25.182a</a>	LPA Certificate 3 Worksheet – Instructions
<a href="#">43.62</a>	Example of Design Approval Document

## 25.21 Local Programs Right of Way Services Website

[Right of Way Services Home](#)

- [Laws & Regulations](#)
- [Manuals & Resources](#)
- [Clarification & Guidance](#)
- [ROW Training & Education](#)
- [LPA Forms & Brochures](#)

The following checklist is provided as an aid to completing a new right of way plan based on [Section 25.4](#) of the Local Agency Guidelines and [WAC 332-130](#).

- A vicinity map showing the project limits and total parcel details for parcels too large to show on the individual plan sheet.
- The survey line or centerline of the alignment.
- The old and new RW limits with sufficient ties to the survey line to allow a legal description to be written for all rights to be acquired.
- Show all rights to be acquired including fee simple acquisitions, permanent easements and temporary easements. Include advanced acquisition parcels.
- The total ownership boundaries of all parcels showing all rights to be acquired.
- The parcel identification number and owner name.
- Contiguous parcels owned by the same owner.
- Verify that the legal description of each parcel has been plotted correctly.
- The calculated area of the parcel(s) to be acquired.
- The calculated area of the remainder.
- Make sure the total, right of way and remainder areas add up correctly.
- Make sure the curve data is correct and matches the information and stationing on the plan.
- Any improvements within 100' of the existing RW line.
- Cross reference notes to existing RW plans, Records of Survey or other documentation.
- Label grade intersection stations.
- Provide necessary backup calculations and title reports.
- Seal and signature of register professional engineer or professional land surveyor in accordance with [RCW 18.43.070](#) and [RCW 58.09](#).
- Design features, width of the new highway (alignment), grade changes, and other detail of the construction.

Verify that the requirements of [WAC 332-130](#) have been met, including:

- Basis of Bearing
- North Arrow
- Text size
- No shading on the plan.
- Identification of corners used to control the alignment
- A description of all monuments shown

# Appendix 25.171 ROW Certification vs URA Compliance Case Studies

## URA COMPLIANCE LETTER CASE STUDIES

### Case Study #1

=====NEPA=====

<b>Project</b> Federal Funds in PE Local Funds in ROW & CN
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**Background information:** This local agency has federal funds in the preliminary engineering (PE) phase and local funds support the rest of the project. The agency will not seek federal participation in ROW or Construction (CN) of the project.

**Guidance:** Since Local Programs is not administering funds for construction of this project, it would not require a Construction Authorization ROW Certificate. The acquisition of ROW on this project would however, need to follow the requirements set forth in the URA. It would be the expectation of the acquiring agency to make sure the requirements of the URA were followed on all real property interests acquired for the project. WSDOT Local Programs would issue a URA Compliance Letter. If the agency comes back later and seeks federal funds in ROW or CN phases, a ROW Certification will be required.

**Note:** Federal funds for the project are from a source other than FHWA and the federal funding is in ROW or Construction, the local agency would follow the normal Construction Authorization ROW Certificate process.

### Case Study #2

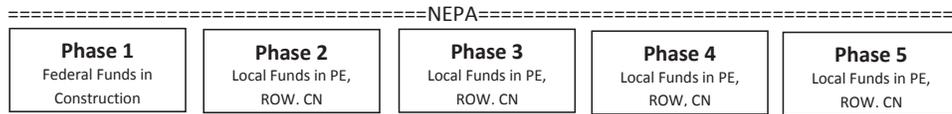
=====NEPA=====

<b>Project 1</b> (Phase 1) Federal Funds in CN	<b>Project 2</b> (Phase 2) Federal Funds in ROW & CN	<b>Project 3</b> (Phase 3) Federal Funds in CN
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**Background information:** A project that has been split into three separate projects, but is covered by one NEPA document. NEPA covers each of the 3 separate projects, all projects (aka phases, stages, segments) have ROW acquisition, project 1 has federal funds in construction, project 2 has federal funds in ROW, and project 3 has federal funds in construction.

**Guidance:** Each of the 3 projects would require a ROW Certification when they are ready to have construction authorized. The process outlined in Chapter 17 of the ROW Manual – Construction Authorization ROW Certificate should be followed.

**Case Study #3**

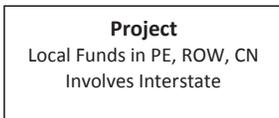


**Background information:** NEPA covers all 5 phases of the project, all phases have ROW acquisition, phase 1 is the only phase with federal financial assistance – the rest is being done with local funds.

**Guidance:** Since there is a \$1 of federal funding in this project the URA applies to all phases. In addition, the local agency must adhere to environmental requirements, Buy America, and Title VI requirements. The first phase has federal funds in construction so it will need to be certified using a Construction Authorization ROW Certificate. Phases 2 through 5 have only local funds so while they are required to follow the URA they do not require a Construction Authorization ROW Certificate. Since the entire project is covered by one NEPA document and one of the phases had federal funds, the entire project is considered to be federalized. Since Local Programs is not administering any federal funds for phases 2 through 5 of this project, it would not require a Construction Authorization ROW Certificate. The acquisition of ROW on this project would however, need to follow the requirements set forth in the URA. It would be the expectation of the acquiring agency to make sure the requirements of the URA were followed on all real property interests acquired for the project. WSDOT Local Programs would issue a URA Compliance Letter. Note: Local Programs has no direct involvement in locally funded projects. However, because the project has been federalized, Phase 1 of the project could be as risk if the agency fails to comply with the URA on phases 2 – 5.

**Case Study #4**

=====SEPA=====



**Background information:** The local agency is using local funds for the entire project, PE, ROW, and CN. A portion of the project involves changes to interstate right of way, including limited access.

**Guidance:** Since changes to interstate limited access require approval of FHWA, NEPA will be required which creates a federal nexus (federalized) requiring the agency to comply with the URA. In addition, the local agency must adhere to environmental requirements, Buy America, and Title VI requirements. A URA Compliance Letter will be issued.

## **Appendix 25.172 Sample Neighborhood Description**

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### **SAMPLE NEIGHBORHOOD DESCRIPTION FOR PROJECT: YAKIMA COUNTY: SUNSET HILL ROAD WIDENING No. 311**

Date: October 21, 1986

The project vicinity is rural Yakima County lying about 25 miles (40 km) westerly of Yakima city limits in an area commonly called Sunset Hill. The county road connecting the area to the city of Yakima is the Sunset Hill Road, which is currently a two-lane arterial. The area is primarily devoted to agricultural uses, such as cattle raising and forest products, but also is developing with single family lot subdivisions and ranchette residential uses. This part of the county is becoming a bedroom area for commuters to Yakima and several commercial uses have developed along the Sunset Hill Road. Zoning here is Agricultural (AG) minimum 20 acres (8 ha), with areas bordering the Sunset Hill Road zoned Single Family Residential (SR 13), minimum 13,000 square feet (1210 square meters) per site, and a strip along said arterial between Henderson Road and White Bluff Boulevard being zoned for commercial and/or office uses (CPD), with a minimum area required of 15,000 square feet (1 395 square meters) per site. Utilities available along Sunset Hill Road are Puget Power, West Yakima Water (Community System), PNB telephone, and sewers are by individual septic systems (soils percolate adequately). There appears to be minimal demand for new commercial development along Sunset Hill Road.

Traffic along the Sunset Hill Road is heavy during the rush hour. Hence, the proposed project is to widen this arterial to four traffic lanes with a dual-left turn lane in the center. A traffic light is planned at the intersection of Henderson Road. The project will be at present grade and will include curbing. Access points will be controlled at existing locations. The right of way needed is a 20-foot (6-meter) strip of fee land from each side of Sunset Hill Road between Henderson Road and White Bluff Boulevard.

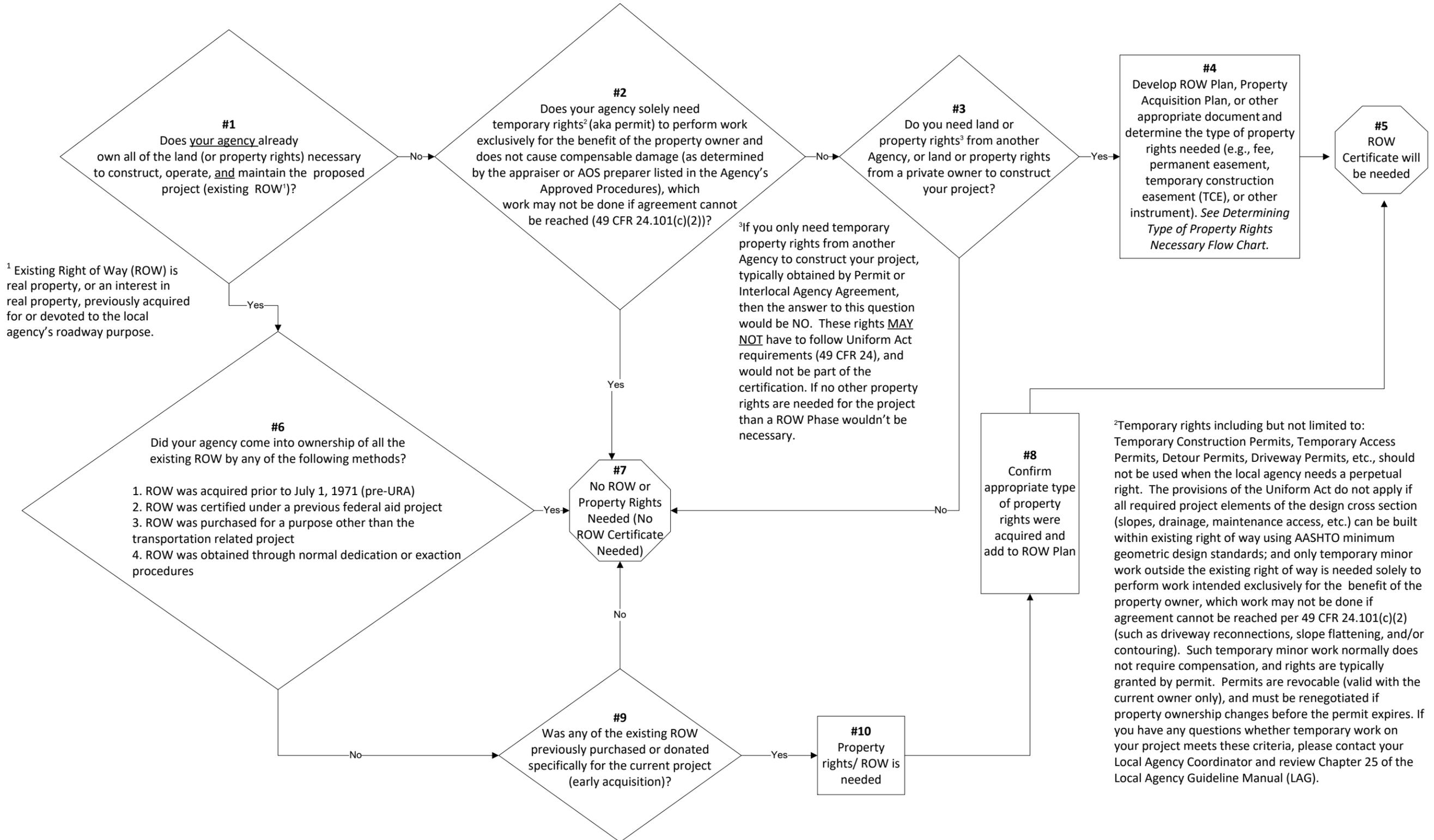
Eleven parcels will be affected: seven homes, a tree farm (2,000 acres (810 ha) in size), one convenience store, a small wholesale lumber mill, and a new professional (medical) office complex. One of the residences is partially in the take and possibly will require relocating the owner-occupant family. A machine shed on the lumber mill site is partially in the take and it contains tenant-owned equipment. The convenience store's gasoline dispensers and canopy are partially in the take. About 10 of the 40 parking stalls for the medical office are in the taking, possibly resulting in loss of one tenant. The project should generally benefit the neighborhood by improving traffic flow during the rush hour. The neighborhood should continue to moderately change from agricultural to single family uses, with no major zoning changes immediately foreseeable, since neighborhood commercial services should remain adequate for the next five or more years.

## **Appendix 25.173 Vacant**

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# Appendix 25.174 Determining Whether Land or Property Rights or Interest are Needed

## Determining Whether Land or Property Rights or Interest are Needed

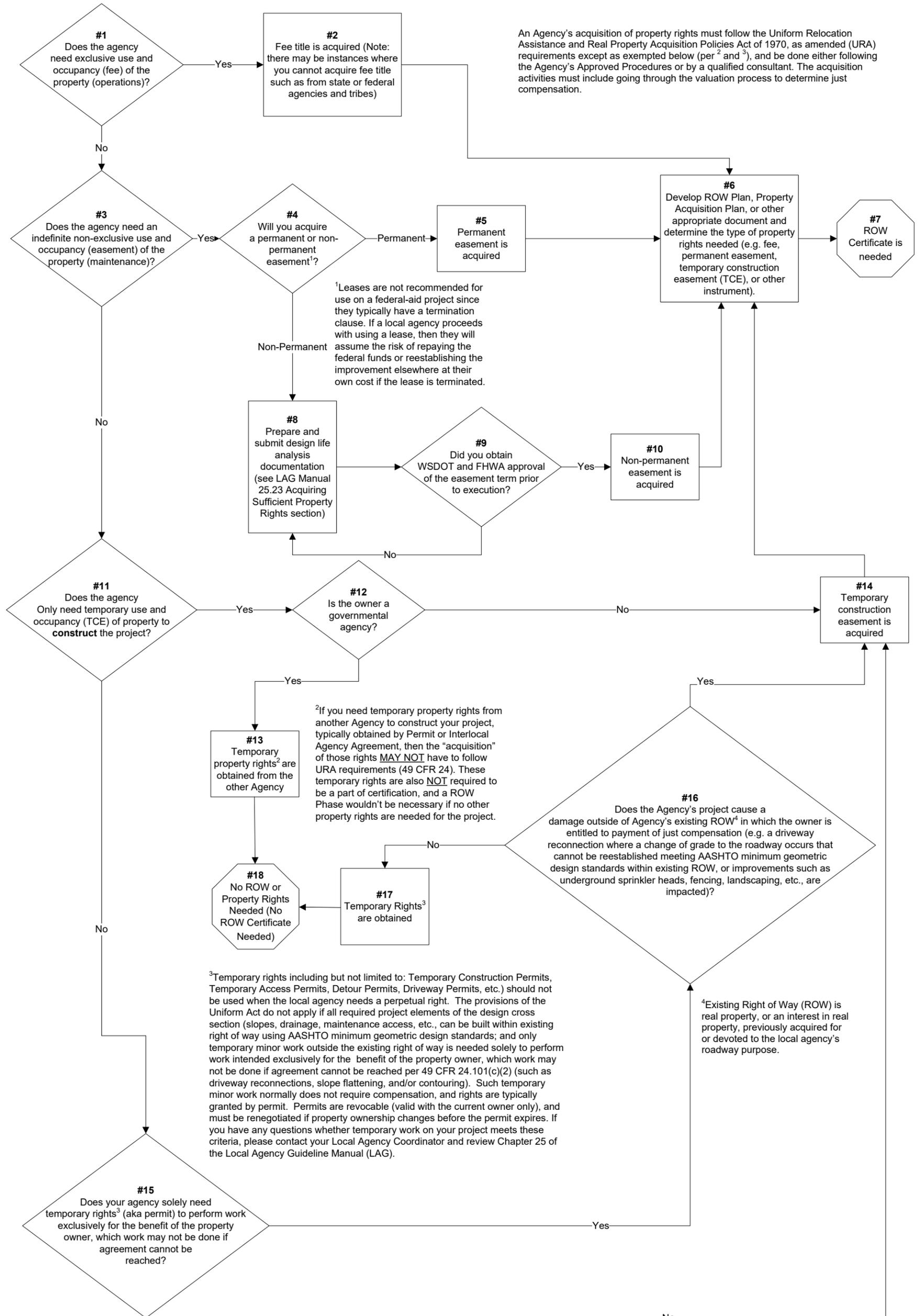


Revised April 2019

# Appendix 25.175 Determining the Type of Property Rights Necessary

## Determining the Type of Property Rights Necessary

You may have a parcel or multiple parcels that fits more than one of these situations.



Revised April 2019

# Appendix 25.176 No ROW Needed Verification Checklist

## No Right-of-Way (ROW) Needed Verification Checklist

This verification checklist is a tool to be used during the completion of the Project Prospectus ( <b>Appendix 21.47</b> ) to aid in determining if <b>ROW</b> is needed for a <b>project</b> . Please verify each of the following statements by comparing the <b>ROW</b> plan against the PS&E (refer to <b>Appendix 25.174</b> & <b>Appendix 25.175</b> for additional guidance):	Yes	N/A
The <b>project</b> can be constructed, operated AND maintained entirely within the <b>acquiring agency's</b> existing <b>ROW</b> , which was obtained under one or more of the following methods:		
1. <b>ROW acquisition</b> occurred prior to July 1, 1971/the <b>Uniform Act</b> ;		
2. <b>ROW</b> was certified under a previous federal aid <b>project</b> ;		
3. <b>ROW</b> was purchased for a purpose other than this <b>project</b> , and is no longer needed for its original purpose; and/or		
4. <b>ROW</b> was obtained through normal dedication or exaction procedures not related to this <b>project</b> (there was no unconstitutional taking).		
<b>Early acquisition</b> or <b>donation</b> was not obtained specifically for this <b>project</b> .		
The <b>acquiring agency</b> does not need to obtain any interest in, or possession of, <b>real property</b> (including temporary uses, <b>easement</b> , <b>access rights</b> , <b>air rights</b> and/or <b>airspace</b> ) to construct, operate and maintain the proposed <b>project</b> .		
The <b>acquiring agency</b> <b>solely</b> needs temporary rights to perform work <b>exclusively</b> for the benefit of the property owner and does not cause compensable <b>damages</b> , which work may not be done if agreement cannot be reached.		
<b>Real property</b> improvements are not encroaching into the existing <b>ROW</b> and/or <b>airspace</b> .		
If all the answers to the above are "Yes" or "NA" then no <b>ROW acquisition</b> is needed, sign the Design Approval Documentation form ( <b>Appendix 43.62</b> ) and place a copy in the <b>project</b> file.		

By: Approving Authority

Print Name

Date

### Regulatory Definitions:

**Access rights** mean the right of ingress to and egress from a property that abuts a street or highway.

**Acquiring agency** means a State agency, other entity, or person acquiring real property for title 23 of the United States Code purposes.

**Acquisition** means activities to obtain an interest in, and possession of, real property.

**Air rights** mean real property interests defined by agreement, and conveyed by deed, lease, or permit for the use of airspace.

**Airspace** means that space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way or project boundaries.

**Damages** means the loss in value attributable to remainder property due to severance or consequential damages, as limited by State law, that arise when only part of an owner's property is acquired.

**Donation** means the voluntary transfer of privately owned real property for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

**Early acquisition** means acquisition of real property by State or local governments in advance of Federal authorization or agreement.

**Easement** means an interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property.

**Program or project** means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines.

**Real property** means land and any improvements thereto, including but not limited to, fee interests, easements, air or access rights, and the rights to control use, leasehold, and leased fee interests.

**Right-of-way** means real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility funded under title 23 of the United States Code.

**Uniform Act** means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), and the implementing regulations at 49 CFR Part 24.

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5/2019

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Early Acquisition (EA) Options & Requirements  
(23 CFR 710.501)

Acquiring ROW Options	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimbursement/ Credits	Comply w/ Federal Law*	Subject to Condemnation	Requirements
1) State-funded early Acquisition without Federal Credit or Reimbursement 23 CFR 710.501(b) 23 USC 108(c)(1)	NO	No, if the State wishes to maintain Federal eligibility for future Federal assistance on any part of the transportation project.	When legally permissible by State Law.	N/A	Yes, if the project maintains Federal eligibility.	YES, if State law allows	A State may carry out early acquisition entirely at its expense. However, a State may maintain eligibility for future Federal assistance on a project. To maintain eligibility, early acquisition must comply with the following requirements of 23 CFR 710.501(c)(1)-(5): <ul style="list-style-type: none"> <li>• Property lawfully obtained by the State agency;</li> <li>• Not 4F property;</li> <li>• Acquisitions and relocations comply with the Uniform Act;</li> <li>• State agency complies with Title VI of the Civil Rights Act;</li> <li>• FHWA concurs with the State that the Early Acquisition did not influence the NEPA decision for the proposed project including:                             <ul style="list-style-type: none"> <li>– The need to construct,</li> <li>– The consideration of alternatives, or</li> <li>– The selection of design or location.</li> </ul> </li> </ul>
2) State-funded Early acquisition eligible for future credit 23 CFR 710.501(c)	NO	NO	When legally permissible by State law.	Request credit for the portion of the property after incorporated in the Federal-aid project	YES	YES, if State law allows	<ul style="list-style-type: none"> <li>• Property lawfully obtained by the State agency;</li> <li>• Not 4F property;</li> <li>• Acquisitions and relocations comply with the Uniform Act;</li> <li>• State agency complies with Title VI of the Civil Rights Act;</li> <li>• FHWA concurs with the State that the Early Acquisition did not influence the NEPA decision for the proposed project including:                             <ul style="list-style-type: none"> <li>– The need to construct,</li> <li>– The consideration of alternatives, or</li> <li>– The selection of design or location;</li> </ul> </li> <li>• Property is incorporated in the project to which the credit will be applied; and</li> <li>• The amount of the credit may be current fair market value or historic acquisition cost to acquire; however, this credit must be applied consistently within the project. 23 U.S.C. 323(b)(2).</li> </ul>
3) State-funded Early Acquisition Eligible for future reimbursement 23 CFR 710.501(d) 23 USC 108(c)	NO	NO	When legally permissible by State law.	After NEPA is completed and real property interests are incorporated in a Title 23 project and all applicable requirements are met.	YES	YES, if State law allows	<ul style="list-style-type: none"> <li>• Property lawfully obtained by the State agency;</li> <li>• Not 4F property;</li> <li>• Acquisitions and relocations comply with the Uniform Act;</li> <li>• State agency complies with Title VI of the Civil Rights Act;</li> <li>• FHWA concurs with the State that the Early Acquisition did not influence NEPA for the proposed project including:                             <ul style="list-style-type: none"> <li>– The need to construct,</li> <li>– The consideration of alternatives,</li> <li>– The selection of design or location;</li> </ul> </li> <li>• State has a mandatory, comprehensive, and coordinated land use, environmental, and transportation planning process under State law, and the Governor has determined in advance that the acquisition is consistent with the State transportation planning process;</li> <li>• The State actually selects the alternative for which the real property interest is acquired pursuant to NEPA;</li> <li>• Prior to approval for Federal participation, NEPA is completed; and</li> <li>• Reimbursement is based on the usual costs to acquire—23 CFR 710.203(b)(1).</li> </ul>

**Early Acquisition (EA) Options & Requirements  
(23 CFR 710.501)**

Acquiring ROW Options	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimbursement/ Credits	Comply w/ Federal Law*	Subject to Condemnation	Requirements
<b>4) Federally funded Early Acquisition (Stand-alone project)</b> 23 CFR 710.501(e) 23 USC 108(d)	YES, NEPA decision required for the early acquisition, stand- alone project only (not the transportation project). (Usually a CE)	NO	After NEPA is complete for the Early Acquisition Project	This is a reimbursable, stand- alone, Federal-aid Project based on FHWA authorization to proceed with acquisition	YES	NO	<ul style="list-style-type: none"> <li>• State certifies and FHWA concurs that the following requirements have been met:                             <ul style="list-style-type: none"> <li>– State has authority to acquire under State law;</li> <li>– Is for a Title 23 eligible transportation project and does not involve 4F properties;</li> <li>– Will not cause significant adverse environmental impacts as a result of the EA project or from cumulative effects of multiple EA projects;</li> <li>– Will not limit the choice or otherwise influence the NEPA decision of FHWA;</li> <li>– Will not prevent the lead agency from making an impartial decision as to alternatives;</li> <li>– Is consistent with the State transportation planning process under 23 U.S.C. 135;</li> <li>– Complies with other applicable Federal laws (including regulations);</li> <li>– Will be acquired through negotiation, without the threat or use of condemnation.</li> <li>– Will not reduce or eliminate relocation benefits under the Uniform Act and Title VI of the Civil Rights Act;</li> <li>– The Early Acquisition project is in the Transportation Improvement Plan; and</li> <li>– NEPA for the Early Acquisition project is complete and approved by FHWA.</li> </ul> </li> <li>• Real property interests acquired cannot be developed in anticipation of the transportation project until a NEPA decision for that transportation project has been completed. No development activity related to demolition, site preparation, or construction that is not necessary to protect health or safety may be undertaken.</li> <li>• If reimbursement is made and the real property interests are not incorporated in a project within 20 years, FHWA must offset the amount against Federal-aid funds apportioned to the State.</li> <li>• Eligibility for Relocation Assistance—a person is considered displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest. Options to purchase and similar agreements do not create an immediate commitment and do not create eligibility.</li> </ul> <p><b>Note:</b> The “Option” to purchase the property at a later day allows the property to remain occupied limiting the risk of blight in the neighborhood due to vacant buildings.</p>

**Advance Acquisition (AA) Options & Requirements  
(23 CFR 710.503)**

Acquiring ROW Options	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimbursement/ Credits	Comply w/ Federal Law*	Subject to Condemnation	Requirements
<b>1) Protective Buying</b> 23 CFR 710.503	**Yes typically a CE. See 23 CFR 771.117(d)(12)	Yes, if consultation is completed on 4F.	Usually during the NEPA process.	After property is incorporated in the Federal-aid project.	YES	YES, if State law allows	Development of the property is imminent.
<b>2) Hardship Acquisition</b> 23 CFR 710.503	**Yes typically a CE. See 23 CFR 771.117(d)(12)	Yes, if consultation is completed on 4F.	Usually during the NEPA process.	After property is incorporated in the Federal-aid project.	YES	YES, if State law allows. See comment	A request for hardship acquisition based on a property owner’s written submission. <b>Note:</b> While the agency may condemn if a settlement cannot be reached on a hardship acquisition, great care should be taken to ensure that the decision is warranted both for the property owner and the agency.

\*Relevant Federal Law includes the Uniform Act, Title VI Civil Rights Act, and Federal Regulations (primarily, 23 CFR Part 710).

\*\*Note: Protective Buying and Hardship Acquisitions usually occur during the transportation project’s NEPA phase. However, prior to approving an AA, NEPA clearance is necessary for the AA parcels. This requires the AA parcels to be carved out from the overall project so that NEPA clearance provided on those parcels, typically in the form of a CE.

# Appendix 25.178 Federal Aid Requirement Checklist



## Federal Aid Requirement Checklist

### Informational Only

Agency: [Click here to enter text.](#) Region: [Click here to enter text.](#) Date: [Click here to enter text.](#)

Project Federal Aid Number: [Click here to enter text.](#)

Project Name: [Click here to enter text.](#)

Federal Funds Will Be Used For:

PE: [Click here to enter text.](#) R/W: [Click here to enter text.](#) CONST.: [Click here to enter text.](#)

Persons Will Be Displaced: Yes  No

Right of Way Acquired for This Project: Yes  No

Reminders	Comments
1. Real property must be appraised before initiation of negotiations with the owner, per 49 CFR 24.102(c) and 24.108.	<a href="#">Click here to enter text.</a>
2. Owners must be given an opportunity to accompany each appraiser during his inspection of the property, per 49 CFR 24.102(c).	<a href="#">Click here to enter text.</a>
3. The acquiring agency must establish just compensation before initiation of negotiations with the owners, per 49 CFR 24.102(d).	<a href="#">Click here to enter text.</a>
4. No increase or decrease in the FMV due to the project except physical deterioration, is to be considered in the valuation of the property, per 49 CFR 24.103(d).	<a href="#">Click here to enter text.</a>
5. Appraisals are not to give consideration nor include any allowance for relocation assistance benefits.	<a href="#">Click here to enter text.</a>
6. The owner is not to be left with an uneconomic remnant that the acquiring agency did not offer to acquire, per 49 CFR 24.102(k).	<a href="#">Click here to enter text.</a>
7. The owner is to be given a written statement of the amount offered as just compensation, and where appropriate, the compensation for real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated in the written statement, per 49 CFR 24.102(e).	<a href="#">Click here to enter text.</a>

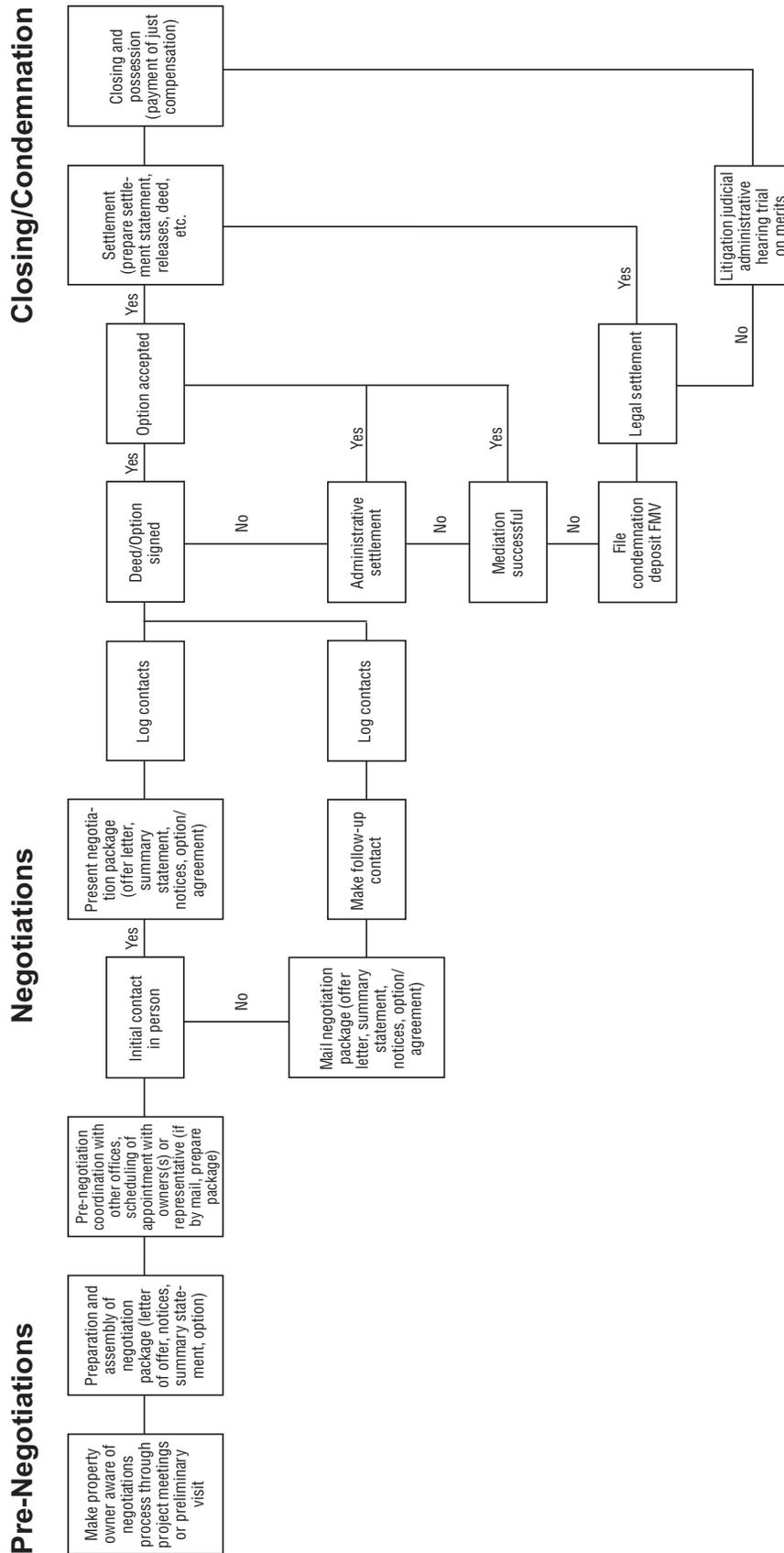
8. No owner shall be required to surrender possession before the agreed purchase price has been paid or the approved amount of compensation has been paid into the court, per 49 CFR 24.102(j).	Click here to enter text.
9. No lawful occupant shall be required to move unless the occupant has been given at least 90 days advance written notice of the earliest date by which the occupant may be required to move, per 49 CFR 24.203(c).	Click here to enter text.
10. The rental amount charged to owners and/or tenants permitted to occupy the property subsequent to acquisition must not exceed the fair rental value for such occupancy, per 49 CFR 24.102(m).	Click here to enter text.
11. No action must be taken to advance condemnation, defer negotiations or condemnation or taken any other action coercive in nature in order to compel an agreement on the price to be paid for the property, per 49 CFR 24.102(h).	Click here to enter text.
12. The acquiring agency must acquire an equal interest in all buildings, etc., located upon the real property acquired, per 49 CFR 24.105.	Click here to enter text.
13. The acquiring agency must pay recording fees, transfer taxes, etc.; penalty costs for pre-payment of a pre-existing mortgage and the pro rata share of real property taxes paid subsequent to vesting title in the acquiring agency, per 49 CFR 24.106.	Click here to enter text.
14. No property owner can voluntarily donate his property prior to being informed of his right to receive just compensation.	Click here to enter text.
15. Provisions have been made for rodent control should it be necessary.	Click here to enter text.
16. No owner was intentionally required to institute legal proceedings to prove the fact of the taking of his real property.	Click here to enter text.

Prepared by: Click here to enter text.

Title: Click here to enter text.

# Appendix 25.179 Acquisition Process Flowchart

## Acquisition Process



# Appendix 25.180 LPA Certification Worksheet – Certificate 1 Sample

Certificate No. 1  
 Agency: ABC County  
 Project Title: NW Gold Trail Project F.A. No.: STPU 2145(001)

R/W Plan Sheet #	Parcel Number	Owner	Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired	RELOCATION					
													None	Res.	Bus.	Farm	NPO	PPD
106	022605-9000	Norris		X								1/21/15						X
	022605-9215								8/30/15			2/1/15						
106	022605-9216	Money	X	X		P		2/1/15	8/30/15			2/1/15						
	022605-9325											3/1/15						
107	022605-9326	Big Blue Diner		X	X	P		2/1/15	8/30/15			2/1/15			X			
108	022605-9456	Strand	X	X								4/30/15						
109	022605-9165	State Parks				N	4/30/45					4/1/15						
111	022605-8500	Dreamy		X								4/1/15						
	6		2	5	1	3	1	2		0			3	1	0	0	1	

<b>Easement Key</b>
P=Permanent/Perpetual
N=Non-Permanent (defined term)*
L=Lease*

\*Non-permanent easements and leases subject to FHWA approval

# Appendix 25.180a LPA Certificate 1 Worksheet – Instructions

## Certificate 1 Worksheet Instructions to Complete Form

### Worksheet Format:

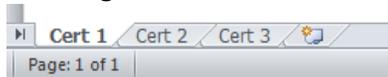
Please do not alter the form by adding or deleting columns as it will affect formulas that automatically compute based on data entered into the spreadsheet. Rows can be added or deleted based on need. It is recommended that adding or removing rows occur between row 4 and row 23.

### Creating a List within a Cell:

GENERAL		
R/W Plan Sheet #	Parcel Number	Owner
106	022605-9000	Norris
	022605-9215	
106	022605-9216	Money
	022605-9325	
	022605-9326	
107	022605-9327	Big Blue Diner

A list of information can be added to a single cell by clicking the “Alt” key at the same time and clicking on the “Return” key.

### Selecting Correct Form:



The excel spreadsheet is set up as a single workbook with tabs at the bottom left corner of the screen. Select the Cert 1 tab to complete the worksheet.

### Electronic Worksheet Instructions:

R/W Plan Sheet #	Parcel Number	Pre-NEPA Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires

Enter the ROW plan sheet number on which the parcel is shown. Parcels should be listed in sequential order according to the ROW plans.

RES-397a – Instructions for Certificate 1 Worksheet  
Created 6/2015

The electronic instructions to complete the worksheet are embedded in each title cell of row 3. Either hover the mouse of the title cell or left click in the cell and the instructions will appear. Once you remove the mouse or click on another cell the instructions will disappear.

**Header:**

**Certificate No. 1**  
 Agency: Name of Agency  
 Project Title: Project Title      F.A. No.: Federal Aid No.

**Agency Name:** Enter acquiring agency name.  
**Project Title:** Enter complete project title which was used on the STIP.  
**F.A. No.:** Enter the federal aid number for the project.

**General Section:**

GENERAL		
R/W Plan Sheet #	Parcel Number	Owner

**R/W Plan Sheet #:** Enter the ROW plan sheet number on which the parcel is shown. Parcels should be listed in sequential order according to the ROW plans.  
**Parcel Number:** The parcel numbers should be listed in the order shown on the ROW plans. Enter the parcel number as identified on the Right of Way Plan. If there are multiple parcels numbers making up the larger parcel determination, they should be shown as a single entry on one line to ensure the parcel count is accurate(use Alt enter function). Please note ROW Plans should be consistent with the certification worksheet.  
**Owner:** Enter the owner name (last name, first name or business name). If there are multiple owners, they should be shown as a single entry on one line to ensure the parcel count is accurate(use Alt enter function).

**Acquisition Section:**

ACQUISITION									
Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired

RES-397a – Instructions for Certificate 1 Worksheet  
 Created 6/2015

**Pre NEPA:** If an offer was made on a parcel prior to environmental approval (NEPA), place an "X" in cell. For all offers made on parcels after environmental approval this field should be left blank.

**Fee:** If fee simple rights (exclusive use and occupancy) were acquired from any portion of the parcel, place an "X" in the cell.

**Access Rights:** Access rights apply to limited access facilities (such as interstate, WSDOT access breaks). If access rights (including light, view, and air) were acquired from any portion of the parcel, place an "X" in the cell.

**Esmt.\* P/N/L:** If a permanent (perpetual), non-permanent (defined term), or lease was acquired from any portion of the parcel, place an "P" for permanent easement, or an "N" for non-permanent easement, or an "L" for lease in cell. \*If something less than a permanent easement is acquired FHWA approval is required.

**Date Esmt.\* N/L Expires:** If you have FHWA approval to acquire a non-permanent easement or lease, enter the expiration date identified in the easement/lease in this cell. This column is not used in the case of a permanent easement.

**Effective Date TCE:** If a temporary easement is acquired for construction purposes on any portion of the parcel, enter the start date of the TCE. This is normally the same date as the date acquired. This is the date the agency has legal and physical possession, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. In the case of donations, the effective date is the possession date.

**Date TCE Expires:** Enter the date the temporary construction easement expires as specified in the temporary easement. Agencies should always use a specific expiration date to avoid clouding a property owner's title.

**Effective Date Permit or Right of Entry:** Permits or right of entries are obtained for any portion of the parcel from other agencies to perform work on their property and normally without payment of compensation, such as tying into another jurisdiction's road. Situations that involve temporary work between agencies, does not have to follow the URA process. If a permit or right of entry was obtained for construction activities required for the project, enter the start date of the permit or right of entry. This is normally the same date as the date acquired. Preliminary testing or studies in advance of construction activities are not required to be certified since the work is not part of the PS&E. Also, "beneficial" permits from private property owners are not required to be certified since the work is not required for the project itself and can be eliminated from the contract if the owner were to revoke the permit.

**Date Permit or Right of Entry Expires:** Enter the date the permit or right of entry expires as specified in the permit or right of entry.

**Date Acquired:** Date acquired is the date the agency has legal and physical possession, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. If the payment is mailed, the agency should add 5 days to the mailing date. In the case of donations, the effective date is the possession date. Enter the date the property was acquired. This must be filled in for each acquisition listed (on a Cert 1) even if the same date appears in other columns.

**NOTE: Refer to the Sufficient Property Rights flow chart (Appendix 25.174 & 25.175) for actual definition of property rights.**

**Relocation Section:**

RELOCATION					
Non-Residential					
None	Res.	Bus.	Farm	NPO	PPO

**None:** If there was no relocation on the parcel place "X" in cell. Even in situations where projects have no relocation, the cell should not be left blank.

**Res:** If your project displaced a residential owner or tenant occupant from the parcel place an "X" in the cell. If there are multiple displaced persons for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.

**Bus.:** If your project displaced a business, including qualifying residential landlords (not to be confused with a business that has to relocate personal property only), place an "X" in the cell. If there are multiple displaced businesses for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.

**Farm:** If your project displaced a farm, place an "X" in the cell. If there are multiple displaced farms for one parcel number, type in the number and change the formula in the total row to auto sum.

**NPO:** If your project displaced a Non-Profit Organization (NPO), place an "X" in the cell. If there are multiple displaced NPOs for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.

**PPO:** If your project displaced Personal Property Only (PPO), place an "X" in the cell. If there are multiple PPO displacements for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.

**Calculated Totals Section:**

GENERAL			ACQUISITION										RELOCATION					
R/W Plan Sheet #	Parcel Number	Owner	Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired	None	Res.	Bus.	Farm	NPO	PPO
	0		0	0	0	0	0	0		0			0	0	0	0	0	0

**Column Totals:** Each column has a formula at the bottom that will "count" the box if it has data in it. The calculations will happen automatically so there is no need to alter or enter information in this section. The totals should be reconciled with the ROW plan to ensure all rights were acquired.

If you have multiple displacements for one parcel you will need to type in the number of displacements in the appropriate column and then change the formula in the total row from a "CountA" to an "Auto Sum".

**Example:**

Certificate No. 1  
 Agency: ABC County  
 Project Title: NW Gold Trail Project F.A. No.: STPU 2145(001)

R/W Plan Sheet #	GENERAL		ACQUISITION								RELOCATION								
	Parcel Number	Owner	Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired	Non-Residential						
													None	Res.	Bus.	Farm	NPO	PPD	
106	022605-9000	Norris		X								1/21/15	X						X
	022605-9215																		
106	022605-9216	Money	X	X		P		2/1/15	8/30/15			2/1/15	X						
	022605-9325																		
	022605-9326																		
107	022605-9327	Big Blue Diner		X		P		2/1/15	8/30/15			2/1/15			X				
108	022605-9456	Strand	X	X	X							3/1/15		2					
109	022605-9165	State Parks				N	4/30/45					4/30/15	X						
111	022605-8500	Dreamy		X								4/1/15		1					
	<b>6</b>		<b>2</b>	<b>5</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>2</b>		<b>0</b>			<b>3</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	

**Easement Key**  
 P=Permanent/Perpetual  
 N=Non-Permanent (defined term)\*  
 L=Lease\*  
 \*Non-permanent easements and leases subject to FHWA approval

**Best practices:**

ROW Plan – for ease of certification it is recommended that you do not rely solely on Tax Identification numbers as they do not define a parcel acquisition. It is better to assign a parcel number that will identify the entire acquisition which could encompass multiple tax parcel numbers.

If your agency uses both tax parcel numbers and assigned numbers, the use of numbers must be consistent between the ROW plan, ROW certification, parcels, and all file documents.



# Appendix 25.181a LPA Certificate 2 Worksheet – Instructions

## Certificate 2 Worksheet Instructions to Complete Form

### Worksheet Format:

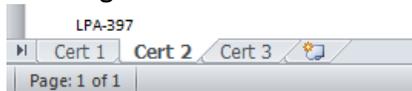
Please do not alter the form by adding or deleting columns as it will affect formulas that automatically compute based on data entered into the spreadsheet. Rows can be added or deleted based on need. It is recommended that adding or removing rows occur between row 4 and row 23.

### Creating a List within a Cell:

GENERAL		
R/W Plan Sheet #	Parcel Number	Owner
106	022605-9000	Norris
	022605-9215	
106	022605-9216	Money
	022605-9325	
	022605-9326	
107	022605-9327	Big Blue Diner

A list of information can be added to a single cell by clicking the “Alt” key at the same time and clicking on the “Return” key.

### Selecting Correct Form:



The excel spreadsheet is set up as a single workbook with tabs at the bottom left corner of the screen. Select the Cert 2 tab to complete the worksheet.

### Electronic Worksheet Instructions:

R/W Plan Sheet #	Parcel Number	Pre-NEPA Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires

Enter the ROW plan sheet number on which the parcel is shown. Parcels should be listed in sequential order according to the ROW plans.

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Created 6/2015

The electronic instructions to complete the worksheet are embedded in each title cell of row 3. Either hover the mouse of the title cell or left click in the cell and the instructions will appear. Once you remove the mouse or click on another cell the instructions will disappear.

**Header:**

Certificate No. 2  
 Agency: Name of Agency  
 Project Title: Project Title      F.A. No.: Federal Aid No.

**Agency Name:** Enter acquiring agency name.

**Project Title:** Enter complete project title which was used on the STIP.

**F.A. No.:** Enter the federal aid number for the project.

**General Section:**

GENERAL		
R/W Plan Sheet #	Parcel Number	Owner

**R/W Plan Sheet #:** Enter the ROW plan sheet number on which the parcel is shown. Parcels should be listed in sequential order according to the ROW plans.

**Parcel Number:** The parcel numbers should be listed in the order shown on the ROW plans. Enter the parcel number as identified on the Right of Way Plan. If there are multiple parcels numbers making up the larger parcel determination, they should be shown as a single entry on one line to ensure the parcel count is accurate(use Alt enter function). Please note ROW Plans should be consistent with the certification worksheet.

**Owner:** Enter the owner name (last name, first name or business name). If there are multiple owners, they should be shown as a single entry on one line to ensure the parcel count is accurate(use Alt enter function).

**Acquisition Section:**

ACQUISITION											
Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired		Possession Date (P&U Only)

**Pre NEPA:** If an offer was made on a parcel prior to environmental approval (NEPA), place an "X" in cell. For all offers made on parcels after environmental approval this field should be left blank.

**Fee:** If fee simple rights (exclusive use and occupancy) were acquired from any portion of the parcel, place an "X" in the cell.

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 Created 6/2015

**Access Rights:** Access rights apply to limited access facilities (such as interstate, WSDOT access breaks). If access rights (including light, view, and air) were acquired from any portion of the parcel, place an "X" in the cell.

**Esmt.\* P/N/L:** If a permanent (perpetual), non-permanent (defined term), or lease was acquired from any portion of the parcel, place an "P" for permanent easement, or an "N" for non-permanent easement, or an "L" for lease in cell. \*If something less than a permanent easement is acquired FHWA approval is required.

**Date Esmt.\* N/L Expires:** If you have FHWA approval to acquire a non-permanent easement or lease, enter the expiration date identified in the easement/lease in this cell. This column is not used in the case of a permanent easement.

**Effective Date TCE:** If a temporary easement is acquired for construction purposes on any portion of the parcel, enter the start date of the TCE. This is normally the same date as the date acquired. This is the date the agency has legal and physical possession, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. In the case of donations, the effective date is the possession date.

**Date TCE Expires:** Enter the date the temporary construction easement expires as specified in the temporary easement. Agencies should always use a specific expiration date to avoid clouding a property owner's title.

**Effective Date Permit or Right of Entry:** Permits or right of entries are obtained for any portion of the parcel from other agencies to perform work on their property and normally without payment of compensation, such as tying into another jurisdiction's road. Situations that involve temporary work between agencies, does not have to follow the URA process. If a permit or right of entry was obtained for construction activities required for the project, enter the start date of the permit or right of entry. This is normally the same date as the date acquired. Preliminary testing or studies in advance of construction activities are not required to be certified since the work is not part of the PS&E. Also, "beneficial" permits from private property owners are not required to be certified since the work is not required for the project itself and can be eliminated from the contract if the owner were to revoke the permit.

**Date Permit or Right of Entry Expires:** Enter the date the permit or right of entry expires as specified in the permit or right of entry.

**Date Acquired:** Date acquired is the date the agency has legal and physical possession and reached final settlement, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. If the payment is mailed, the agency should add 5 days to the mailing date. In the case of donations, the effective date is the possession date. Enter the date the property was acquired. This must be filled in for each parcel acquired except in the case where final settlement has not been reached (see possession date below) even if the same date appears in other columns.

**Possession Date (P&U Only):** The possession date is the date the agency has the right to occupy and use the portion of the parcel needed for the project. Enter the date the agency obtained possession and use of the property. Possession cannot occur prior to payment to the property owner. In the case of a negotiated P&U, if the payment is mailed, the agency should add 5 days to the mailing date. If the payment is deposited into the court in the case of stipulated P&U, enter the date of receipt by the court clerk's office. This is only applicable in situations in which all necessary rights of way have not been acquired because final settlement has not been reached.

**NOTE: Refer to the Sufficient Property Rights flow chart (Appendix 25.174 & 25.175) for actual definition of property rights.**

**Relocation Section:**

RELOCATION					
Non-Residential					
None	Res.	Bus.	Farm	NPO	PPO

**None:** If there was no relocation on the parcel place "X" in cell. Even in situations where projects have no relocation, the cell should not be left blank.

**Res:** If your project displaced a residential owner or tenant occupant from the parcel place an "X" in the cell. If there are multiple displaced persons for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.

**Bus.:** If your project displaced a business, including qualifying residential landlords (not to be confused with a business that has to relocate personal property only), place an "X" in the cell. If there are multiple displaced businesses for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.

**Farm:** If your project displaced a farm, place an "X" in the cell. If there are multiple displaced farms for one parcel number, type in the number and change the formula in the total row to auto sum.

**NPO:** If your project displaced a Non-Profit Organization (NPO), place an "X" in the cell. If there are multiple displaced NPOs for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.

**PPO:** If your project displaced Personal Property Only (PPO), place an "X" in the cell. If there are multiple PPO displacements for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.

**Calculated Totals Section:**

GENERAL			ACQUISITION										RELOCATION							
R/W Plan Sheet #	Parcel Number	Owner	Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired	Possession Date (P&U Only)	None	Res.	Bus.	Farm	NPO	PPO	
	0		0	0	0	0	0	0		0				0	0	0	0	0	0	0

**Column Totals:** Each column has a formula at the bottom that will “count” the box if it has data in it. The calculations will happen automatically so there is no need to alter or enter information in this section. The totals should be reconciled with the ROW plan to ensure all rights were acquired.

If you have multiple displacements for one parcel you will need to type in the number of displacements in the appropriate column and then change the formula in the total row from a “CountA” to an “Auto Sum”.

**Example:**

Certificate No. 2  
Agency: ABC County  
Project Title: NW Gold Trail Project F.A. No.: STPU 2145(001)

R/W Plan Sheet #	Parcel Number	Owner	ACQUISITION										RELOCATION									
			Pre-NEPA	Fee	Access Rights	Easmt.* P/N/L	Date Easmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired	Possession Date (P&U Only)	None	Res.	Bus.	Farm	NPO	PPD			
106	022605-9000	Norris		X											1/21/15		X					X
106	022605-9215																					
106	022605-9216	Money	X	X		P		2/1/15	8/30/15						2/1/15		X					
	022605-9325																					
	022605-9326																					
107	022605-9327	Big Blue Diner		X		P		2/1/15	8/30/15						2/1/15			X				
108	022605-9456	Strand	X	X	X										3/1/15			2				
109	022605-9165	State Parks				N	4/30/45								4/30/15		X					
111	022605-8500	Dreamy		X											4/1/15			1				
112	022605-7852	Wort		X											3/6/15							
	<b>6</b>		<b>2</b>	<b>5</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>2</b>				<b>0</b>					<b>3</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>	

**Easement Key**  
 PPermanent/Perpetual  
 NNon-Permanent (defined term)\*  
 LLease\*  
\*Non-permanent easements and leases subject to FHWA approval

**Best practices:**

ROW Plan – for ease of certification it is recommended that you do not rely solely on Tax Identification numbers as they do not define a parcel acquisition. It is better to assign a parcel number that will identify the entire acquisition which could encompass multiple tax parcel numbers.

If your agency uses both tax parcel numbers and assigned numbers, the use of numbers must be consistent between the ROW plan, ROW certification, parcels, and all file documents.



# Appendix 25.182a LPA Certificate 3 Worksheet – Instructions

## Certificate 3 Worksheet Instructions to Complete Form

### Worksheet Format:

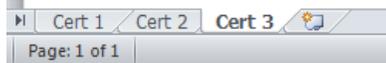
Please do not alter the form by adding or deleting columns as it will affect formulas that automatically compute based on data entered into the spreadsheet. Rows can be added or deleted based on need. It is recommended that adding or removing rows occur between row 4 and row 23.

### Creating a List within a Cell:

GENERAL		
R/W Plan Sheet #	Parcel Number	Owner
106	022605-9000	Norris
	022605-9215	
106	022605-9216	Money
	022605-9325	
	022605-9326	
107	022605-9327	Big Blue Diner

A list of information can be added to a single cell by clicking the “Alt” key at the same time and clicking on the “Return” key.

### Selecting Correct Form:



The excel spreadsheet is set up as a single workbook with tabs at the bottom left corner of the screen. Select the Cert 3 tab to complete the worksheet.

### Electronic Worksheet Instructions:

R/W Plan Sheet #	Parcel Number	Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires

Enter the ROW plan sheet number on which the parcel is shown. Parcels should be listed in sequential order according to the ROW plans.

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Created 6/2015

The electronic instructions to complete the worksheet are embedded in each title cell of row 3. Either hover the mouse of the title cell or left click in the cell and the instructions will appear. Once you remove the mouse or click on another cell the instructions will disappear.

**Header:**

Certificate No. 3  
 Agency: Name of Agency  
 Project Title: Project Title F.A. No.: Federal Aid No.

**Agency Name:** Enter acquiring agency name.  
**Project Title:** Enter complete project title which was used on the STIP.  
**F.A. No.:** Enter the federal aid number for the project.

**General Section:**

GENERAL		
R/W Plan Sheet #	Parcel Number	Owner

**R/W Plan Sheet #:** Enter the ROW plan sheet number on which the parcel is shown. Parcels should be listed in sequential order according to the ROW plans.  
**Parcel Number:** The parcel numbers should be listed in the order shown on the ROW plans. Enter the parcel number as identified on the Right of Way Plan. If there are multiple parcels numbers making up the larger parcel determination, they should be shown as a single entry on one line to ensure the parcel count is accurate(use Alt enter function). Please note ROW Plans should be consistent with the certification worksheet.  
**Owner:** Enter the owner name (last name, first name or business name). If there are multiple owners, they should be shown as a single entry on one line to ensure the parcel count is accurate(use Alt enter function).

**Acquisition Section:**

ACQUISITION											
Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired	Possession Date (P&U) Only	Estimated Possession Date

**Pre NEPA:** If an offer was made on a parcel prior to environmental approval (NEPA), place an "X" in cell. For all offers made on parcels after environmental approval this field should be left blank.  
**Fee:** If fee simple rights (exclusive use and occupancy) were acquired from any portion of the parcel, place an "X" in the cell.

**Access Rights:** Access rights apply to limited access facilities (such as interstate, WSDOT access breaks). If access rights (including light, view, and air) were acquired from any portion of the parcel, place an "X" in the cell.

**Esmt.\* P/N/L:** If a permanent (perpetual), non-permanent (defined term), or lease was acquired from any portion of the parcel, place an "P" for permanent easement, or an "N" for non-permanent easement, or an "L" for lease in cell. \*If something less than a permanent easement is acquired FHWA approval is required.

**Date Esmt.\* N/L Expires:** If you have FHWA approval to acquire a non-permanent easement or lease, enter the expiration date identified in the easement/lease in this cell. This column is not used in the case of a permanent easement.

**Effective Date TCE:** If a temporary easement is acquired for construction purposes on any portion of the parcel, enter the start date of the TCE. This is normally the same date as the date acquired. This is the date the agency has legal and physical possession, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. In the case of donations, the effective date is the possession date.

**Date TCE Expires:** Enter the date the temporary construction easement expires as specified in the temporary easement. Agencies should always use a specific expiration date to avoid clouding a property owner's title.

**Effective Date Permit or Right of Entry:** Permits or right of entries are obtained for any portion of the parcel from other agencies to perform work on their property and normally without payment of compensation, such as tying into another jurisdiction's road. Situations that involve temporary work between agencies, does not have to follow the URA process. If a permit or right of entry was obtained for construction activities required for the project, enter the start date of the permit or right of entry. This is normally the same date as the date acquired. Preliminary testing or studies in advance of construction activities are not required to be certified since the work is not part of the PS&E. Also, "beneficial" permits from private property owners are not required to be certified since the work is not required for the project itself and can be eliminated from the contract if the owner were to revoke the permit.

**Date Permit or Right of Entry Expires:** Enter the date the permit or right of entry expires as specified in the permit or right of entry.

**Date Acquired:** Date acquired is the date the agency has legal and physical possession and reached final settlement, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. If the payment is mailed, the agency should add 5 days to the mailing date. In the case of donations, the effective date is the possession date. Enter the date the property was acquired. This must be filled in for each parcel acquired except in the case where final settlement has not been reached (see possession date below) even if the same date appears in other columns.

**Possession Date (P&U Only):** The possession date is the date the agency has the right to occupy and use the portion of the parcel needed for the project. Enter the date the agency obtained possession and use of the property. Possession cannot occur prior to payment to the property owner. In the case of a negotiated P&U, if the payment is mailed, the agency should add 5 days to the mailing date. If the payment is deposited into the court in the case of stipulated P&U, enter the date of receipt by the court clerk's office. This is only applicable in situations in which all necessary rights of way have not been acquired because final settlement has not been reached.

**Estimated Possession or Clear Date:** This column is only used if there are parcels excepted from the certification which are shown at the bottom of the spreadsheet highlighted in orange. Enter the date the agency estimates they will obtain possession or the date the parcel will be cleared for certification (occupants relocated, improvements cleared from the right of way, cost to cures completed).

**NOTE: Refer to the Sufficient Property Rights flow chart (Appendix 25.174 & 25.175) for actual definition of property rights.**

**Relocation Section:**

RELOCATION					
Non-Residential					
None	Res.	Bus.	Farm	NPO	PPO

- None:** If there was no relocation on the parcel place "X" in cell. Even in situations where projects have no relocation, the cell should not be left blank.
- Res:** If your project displaced a residential owner or tenant occupant from the parcel place an "X" in the cell. If there are multiple displaced persons for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.
- Bus.:** If your project displaced a business, including qualifying residential landlords (not to be confused with a business that has to relocate personal property only), place an "X" in the cell. If there are multiple displaced businesses for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.
- Farm:** If your project displaced a farm, place an "X" in the cell. If there are multiple displaced farms for one parcel number, type in the number and change the formula in the total row to auto sum.
- NPO:** If your project displaced a Non-Profit Organization (NPO), place an "X" in the cell. If there are multiple displaced NPOs for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.
- PPO:** If your project displaced Personal Property Only (PPO), place an "X" in the cell. If there are multiple PPO displacements for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.

**Calculated Totals Section:**

GENERAL			ACQUISITION										RELOCATION								
R/W Plan Sheet #	Parcel Number	Owner	Pre-NEPA	Fee	Access Rights	Emt.* P/N/L	Date Emnt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired	Possession Date (P&U) Only	None	Res.	Bus.	Farm	NPO	PPO	Estimated Possession Date	
	0		0	0	0	0	0	0		0					0	0	0	0	0	0	

**Column Totals:** Each column has a formula at the bottom that will "count" the box if it has data in it. The calculations will happen automatically so there is no need to alter or enter





### 29.1 General Discussion

This chapter summarizes the regulations and implementing requirements local agencies shall follow regarding services, programs, and activities in or that affect the public right of way.

*Section 504 of the Rehabilitation Act of 1973 (Section 504)* states that no person with a disability shall be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity that receives Federal funding. This includes both transportation and non-transportation funding. Transportation funding includes funding from the United States Department of Transportation (USDOT) or the operating administrations under it (Federal Highway Administration, Federal Transit Administration, Federal Railroad Administration, Federal Aviation Administration, Research and Special Programs Administration, National Highway Traffic Safety Administration, or the U.S. Coast Guard).

Section 504 extends to the entire operations of a recipient or subrecipient, regardless of the specific funding source of a particular operation. Section 504 Regulations ([49 CFR Part 27.5](#)) define a recipient as any public entity that receives Federal financial assistance from the USDOT or its operating administrations either directly or through another recipient. An example of a recipient is WSDOT an example of a subrecipient is a local agency receiving USDOT funds through WSDOT, for projects/programs/activities administered by the local agency.

All public entities shall follow *the Americans with Disabilities Act of 1990 (ADA)*, regardless of funding sources. The ADA is mirrored after Section 504 but extends the reach of Federal accessibility laws to include those agencies that are not recipients or subrecipients of Federal funding. Title II ([28 CFR Part 35](#)) of the ADA specifically pertains to state and local governments.

The respective Federal funding agency (FHWA) and WSDOT will ensure that local agencies comply with Section 504 and the ADA. For more information about Section 504 and the ADA, please see WSDOT Equal Opportunity ADA website: [www.wsdot.wa.gov/EqualOpportunity/ADA.htm](http://www.wsdot.wa.gov/EqualOpportunity/ADA.htm)

Local agency public works staff should also refer to Chapter 42 of the Local Agency Guidelines (LAG) for technical information specific to public right-of-way facilities.

## 29.2 Assurances

Each local agency that receives Federal funding from the USDOT or its operating administrations (such as FHWA) shall submit a written assurance that all of its services, programs, and activities will be conducted in compliance with Section 504 and the ADA. The assurance shall be signed by the Agency Executive, and submitted to each agency (such as WSDOT) administering funds for the USDOT or an operating administration.

Federal aid projects administered through WSDOT require a Local Agency Agreement between the local agency and WSDOT. That agreement may serve as the local agency's assurance of compliance with Section 504 and the ADA as long as it is signed by the Agency Executive and states the following:

*In accordance with Section 504 and the ADA, the Agency shall not discriminate on the basis of disability in any of its programs, services, or activities.*

## 29.3 Administrative Requirements

The following list and [Appendix 29.11](#) summarize some of the key requirements of Section 504 and the ADA. Note that when a requirement cites a number of employees, that number is the number of paid permanent, temporary, and contract employees regardless of whether the employees are full or part time.

- Each agency, regardless of the number of employees and funding sources, shall ensure that its services, programs, and activities are accessible to persons with disabilities. Some things this includes are:
  - Transportation and community evacuation elements of emergency management programs/plans
  - Communications. Communications with persons with disabilities shall be as effective as communications with other persons. This applies to all forms of communications, including information posted on an agency's website (ref. Section 508 of the Rehabilitation Act and the ADA), emergency services communications, pedestrian signal systems, etc.
  - Maintenance of programs and facilities. This includes maintaining accessibility of pedestrian facilities that may be impacted by overgrown vegetation, snow/ice, severe heaving/cracking of surfaces, construction work zones, etc. Pedestrian signals/pushbuttons must also be accessible and maintained in working order.
  - New construction and altered facilities.
- Each agency regardless of the number of employees shall designate at least one person as its ADA/504 Coordinator. The individual designated as the ADA/504 Coordinator is responsible for coordinating ADA/Section 504 compliance throughout the agency. The agency shall provide the name, office address, and telephone number of the ADA/504 Coordinator both internally and externally. This information is required to be posted in areas likely to be viewed by employees and the general public (such as the agency's Web page, etc.).

- Each agency regardless of the number of employees shall adopt and publish grievance/complaint procedures. These procedures shall be posted internally and externally and be made available in alternative formats that address the needs of persons with mobility, visual, and hearing disabilities. This information is required to be posted in areas likely to be viewed by employees and the general public (such as the agency's Web page).
- Each agency, regardless of the number of employees, shall provide public notice of its ADA provisions. This notice shall contain a brief description about how the agency will address ADA accessibility in its employment, communications, policies, and resolution of complaints. This notice shall be placed in locations and/or facilities that are accessible internally and externally and be available in alternative formats that address the needs of persons with mobility, visual, and hearing disabilities. Information placed on the agency's Web page counts as posting externally.
- Each agency, regardless of the number of employees, shall conduct a self-evaluation of its policies, programs, services, and activities to determine whether Section 504/ADA accessibility requirements are being met. This includes all public right-of-way facilities. See [Appendix 29.11](#). Each agency shall provide an opportunity for interested parties (i.e., persons with disabilities/advocacy groups) to participate in the process.
- Each agency with 50 or more employees shall develop a transition plan (See Section 29.4) when structural modifications, identified through a self-evaluation process, are necessary to achieve program accessibility under the ADA. While Section 504 regulations contain similar requirements, there is no employee threshold and the regulation is not as descriptive as the ADA regulations. Therefore, each agency with fewer than 50 employees that is a recipient or subrecipient of Federal financial assistance shall develop a program access plan. See [Section 29.4](#) for the requirements of these plans.

An agency's self-evaluation and transition plan must cover all of the agency's programs (including facilities), services, and activities. The information contained in this chapter is intended to provide local agency transportation departments (i.e., public works) with guidance/expectations for addressing ADA accessibility requirements associated with public right-of-way facilities.

## 29.4 Transition Plan, Program Access Plan, and Accessible Pedestrian Signal and Pushbutton Policy

Each agency shall provide an opportunity for interested parties (i.e., persons with disabilities/advocacy groups) to participate in the process to develop a transition plan or program access plan.

FHWA considers transition plans and program access plans to be living documents. The applicable plan should be used in conjunction with the planning and prioritizing of projects, and for monitoring progress on completing modifications. If the time period of the plan is longer than one year, the plan shall identify steps that will be taken during each year of the transition period. FHWA also recommends that the plan be updated annually until all planned modifications have been completed.

## Transition Plan

As stated in [Section 29.3](#) of this chapter, agencies with 50 or more employees (ADA), regardless of funding source, shall develop a transition plan when structural modifications are necessary to achieve ADA compliance. Based on the agency's self-evaluation, at a minimum the plan shall:

- Identify the physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities, including those within the public right of way.
- Describe in detail the methods that will be used to make the facilities accessible.
- Specify the schedule for each facility and/or obstacle to be retrofitted. FHWA recommends that an agency include the estimated cost of each modification as part of the schedule, to assist in the budget and/or Transportation Improvement Program (TIP) preparation.
- Identify the official responsible for implementation of the plan. This is typically the agency's Executive, or the agency's designated ADA/504 Coordinator who has the authority to act on behalf of the agency's Executive.

## Program Access Plan

As stated in [Section 29.3](#), agencies with fewer than 50 employees and a recipient of Federal financial assistance are required to develop a program access plan. Similar to a transition plan, agencies shall:

- Identify the physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities, including those within the public right of way.
- Describe in detail the methods/actions needed to make the facilities accessible.
- Specify a schedule (milestones) of when the agency plans to make the necessary modifications.

## Accessible Pedestrian Signal and Pushbutton (APS) Policy

Based on input from the U.S. Department of Justice (DOJ), it is FHWA's policy to require recipients and subrecipients (of FHWA funding) to establish a "reasonable and consistent" policy for installing accessible pedestrian signals and pushbuttons (APS) on all alteration and new construction projects, consistent with the requirements of Title II of the ADA ([28 CFR Part 35.151](#)) and Section 504 regulations ([49 CFR Part 27.7\(c\)](#)). This policy should be part of a transition plan, program access plan, or a stand-alone document if a transition plan or program access plan has not yet been completed. FHWA and WSDOT will work with local agencies to ensure that all new and altered pedestrian signal and pushbutton installations are usable by persons with visual disabilities.

## 29.5 Requirements for New Construction and Alterations in the Public Right of Way

Title II of the ADA requires that new and altered facilities be designed and constructed to be readily accessible to and usable by persons with disabilities.

### New Construction

New construction projects address the construction of a new roadway, interchange, or other transportation facility where none existed before. New construction is expected to meet the highest level of ADA accessibility unless it is structurally impracticable to achieve full compliance. Full compliance will be considered structurally impracticable only when, in rare circumstances, the unique characteristics of terrain prevent full compliance.

### Alterations

The vast majority of construction projects undertaken by local agency public works/ transportation departments are classified as alterations. An alteration is a change that affects or could affect the usability of a facility or part of a facility. Alterations include reconstruction, major rehabilitation, widening, resurfacing (e.g., asphalt overlays and mill and fill), signal installation and upgrades, and projects of similar scale and effect. Alterations to existing facilities shall meet new construction standards unless it is technically infeasible to do so. If full ADA compliance cannot be achieved in an alteration, the agency shall alter the facility to provide the maximum degree of accessibility possible. The feasibility meant by this standard is physical possibility only. Neither cost nor schedule are factors in determining whether the ADA standards can be met, nor are they factors in determining the feasibility of complying with the standard.

An alteration project shall be planned, designed, and constructed so that the required accessibility improvements occur at the same time as the alteration. If a project involves resurfacing the street, connections between the sidewalk and street crossings (i.e., curb ramps) are considered to be within the scope of the alteration project. Any accessibility issues shall be addressed in conjunction with the resurfacing project, either prior to or at the same time as the resurfacing project. For the requirements for curb ramps during resurfacing projects, see USDOJ-USDOT's Joint Technical Assistance document, dated July 8, 2013 and the Supplement to this document, dated December 1, 2015; and a FHWA recorded webinar from FHWA, dated March 1, 2016.

### Safe Harbor for Alterations

Both the Section 504 and ADA requirements contain a "safe harbor" provision. However, there is a difference in the timeline associated with the Section 504 safe harbor provision and the ADA safe harbor provision.

If an agency receives Federal financial assistance from USDOT – either directly or through another USDOT recipient (such as WSDOT), the agency is subject to the 2004 ADA Accessibility Guidelines (2004 ADAAG).

This became effective in 2006 when the USDOT adopted the 2004 ADA Accessibility Guideline (2004 ADAAG) into its Section 504 regulations. This document is known as the 2004 ADA Standards. The 2004 Standards have a "safe harbor" provision for curb ramps. The provision is that if a curb ramps was constructed or altered prior to November 29, 2006, and complies with either the 1991 ADA Standards for Accessible

Design (1991 ADA Accessibility Guidelines) or the Uniform Federal Accessibility Standards (UFAS), it does not need to be modified as part of a roadway resurfacing project. If this is not the case, or if the curb ramp is in disrepair then the curb ramp and its detectable warnings (truncated domes) must shall be brought into compliance with the 2004 Standards) at the time of an alternation. As mentioned above in Section 29.1, if an agency receives Federal financial assistance from USDOT – either directly or through another DOT recipient (such as WSDOT), then the agency is subject to the 2004 ADAAG as part of the USDOT Section 504 regulations.

For those agencies who are not a recipient or subrecipient of Federal financial assistance from USDOT, the safe harbor provision in the 2010 ADA Standards for Accessible Design (2010 Standards) applies. Under the 2010 Standards' safe harbor provision, if curb ramps were built or altered (in existing facilities) prior to March 15, 2012 and if they comply with the 1991 Standards or the UFAS, they do not need to be modified as part of a resurfacing project.

However, if an existing curb ramp does not comply with either the 1991 Standards or the UFAS (including if the curb ramp is in a state of disrepair), then the Safe Harbor provision does not apply and the curb ramp would need to be brought into compliance with the 2010 Standards at the time of roadway alteration.

When curb ramps or abutting sidewalks abutting ramps are altered, they shall be reconstructed to meet the 2010 Standards. For additional curb ramp design guidance, see LAG manual Chapter 42.

### **Documentation for Structural Impracticability and Maximum Extent Feasible**

While ADA/Section 504 regulations do not require documentation of the application of structural impracticability nor maximum extent feasible, both FHWA and the U.S. Access Board recommend that these instances be documented so the agency can support its decisions if challenged at a later date. The documentation of these instances should reveal the standard of care that guided engineering judgments. While careful documentation will not protect an agency against complaint, evidence of the considerations that led to the specific project solution may be persuasive in discussions with stakeholders or in court.

As described in the [Design Manual](#) M 22-01, WSDOT has a documentation procedure for applications of maximum extent feasible in alteration projects on state routes. If a local agency applies maximum extent feasible to a pedestrian facility located on a state route, it is WSDOT's expectation that the agency follow the WSDOT documentation procedure described in the [Design Manual](#) M 22-01. The completed documentation should be contained in local agency project files to document the agencies design efforts in complying with the ADA/Section 504 requirements.

If a local agency finds the need to apply maximum extent feasible to a pedestrian facility that is not located on a state route, the WSDOT documentation procedure does not need to be followed. However, it is highly recommended that the agency develop its own documentation protocol for such situations that is consistent with the FHWA and U.S. Access Board recommendations.

## 29.6 Monitoring and Enforcement

Responsibility for monitoring and enforcement of Section 504 rests with the Federal funding agency (such as FHWA). While USDOJ has the ultimate enforcement authority for ADA compliance, USDOJ has delegated monitoring and enforcement responsibility to several Federal executive agencies including the USDOT and its operating administrations (such as FHWA).

FHWA requires WSDOT to monitor and enforce the compliance with both Section 504 and the ADA of any entity receiving disbursement of either state or Federal funding through WSDOT. FHWA monitors WSDOT and local agency compliance through various means such as process and program reviews, construction inspections, PS&E reviews, and complaint investigations. If noncompliance is found, and the noncompliance is not corrected to FHWA's satisfaction, FHWA may terminate existing Federal funding or refuse to grant future funding.

## 29.7 Laws

- 29 USC 794 - Section 504 of the Rehabilitation Act of 1973 (as amended by the Civil Rights Restoration Act of 1987)
- 42 USC 12111 - Americans with Disabilities Act (Title II)

## 29.8 Regulations

- [28 CFR Part 35](#) (Title II) "Nondiscrimination on the Basis of Disability in State and Local Government Services"
- [49 CFR Part 27](#) (Section 504) "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance"
- [49 CFR Part 37](#) "Transportation Services for Individuals with Disabilities (ADA)"
- [49 CFR Part 38](#) "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"

## 29.9 Resources

- Chapters [1510](#) and [1515](#) of the *Design Manual* M 22-01
- [Chapter 42](#) of this manual

## 29.10 Appendices

- [29.11](#) ADA Title II and Section 504 Regulatory References



## Chapter 31 *Using Consultants*

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To be eligible for reimbursement of Federal Highway Administration (FHWA) funds for payments to a consultant, the procedures in this chapter must be followed. If a Local Agency elects to retain the consultant at its own cost, state law must be followed.

This chapter covers agreements for architects, landscape architects, land surveying, and engineering services outlined in [RCW 39.80](#) (see [Section 31.1](#)). The definitions of these four professions are described in [RCW Chapters 18.08, 18.43, and 18.96](#). These will be referred to as architectural and engineering (A&E) services, or engineering services, in this chapter. These include:

- Professional services of an architectural or engineering nature that are required to be performed or approved by a person licensed, registered, or certified to provide the service needed.
- Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property.
- Professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering profession perform services, including but not limited to studies, investigations, surveying and mapping, value engineering, construction phase services, soils engineering, and other related services.

This chapter also covers Non-A&E Professional Service agreements. Examples of professional services typically include, but are not limited to:

- Material testing (as long as the consultant is delivering test results only, not performing an analysis or producing a discipline report).
- Financial and economic analyses.
- Environmental planning—as opposed to environmental engineering.
- Legal services.
- Management consulting not related to A&E projects.
- Media and public involvement; marketing services.
- Research.
- Scientific studies.
- Appraisal services not related to A&E projects.
- Real Estate activities including acquisition, relocation, appraisal, appraisal review, and property management
- Expert witness services for litigation.

Throughout this chapter the term “project” means the work to be undertaken by the consultant.

The basic steps for entering into a consultant agreement are:

1. Determine the need for services.
2. Advertise the need for services.
3. Evaluate the applicants’ qualifications.

4. Select the most qualified firm.
5. Negotiate with the most qualified firm.
6. Execute the contract (Agreement, Exhibits, and Supplements – see appendices).

### 31.1 A&E Services Consultants

A&E consultant services include the following:

1. Professional or technical expertise to accomplish a specific study, project, task, or other work statement.
2. Any phase of project development, as well as special studies or other assignments within any phase.
3. Periodic examination and consultation or full-time technical inspection during the construction phase.
4. Consultant design and preparation of plans, specifications, and estimates is common when an Agency's staff is small or when an Agency needs additional expertise.

Consultant services do not include purchased services provided by a vendor to accomplish routine, continuing, and necessary services. These may be acquired through use of purchased service agreements. Purchased services include services for equipment maintenance and repair, operation of a physical plant, security, computer hardware and software maintenance, data entry, key punch services, computer time-sharing, contract programming, and analysis ([RCW 39.26](#)).

Section 319 of Public Law 101-121 prohibits federal funds from being expended by consultants or subconsultants who receive a federal contract, grant, loan, or cooperative agreement to pay, any person for influencing or attempting to influence a federal Agency or Congress in connection with awarding any of the above.

**11. Determine the Need for A&E Consultant Services** – Before an Agency advertises for A&E consultant services, Agencies must have a clear definition of the work to be accomplished. This includes identification of:

1. The nature and scope of effort required.
2. The technical requirements and qualifications of the consultant services needed.
3. The level of funding resources available.
4. The time frame for performing the work.
5. The expected results and products to be received (deliverables).
6. An independent agency cost estimate (see [Appendix 31.94](#)).
7. The establishment of consultant contract DBE goal.

If assistance is needed in describing the desired scope of work, the Agency should seek information from the Region Local Program Engineer or from other Local Agencies that have had similar projects.

Selection of the most qualified consultant firm is based on evaluations, therefore Agencies must develop clear selection guidelines (see [Section 31.13](#)). The selection criteria should enable the Agency to identify and select the consultant best qualified to meet the Agency's needs and ensure that the selected consultant understands and provides services for the Agency's needs in the most cost-effective manner.

The three agreement types are lump sum, cost plus fixed fee, and negotiated hourly rates (see [Section 31.42](#)). The Agency should determine the type of agreement to be developed with the consultant (though this may be modified during negotiations with the selected consultant). Consultant agreements are available at [www.wsdot.wa.gov/localprograms](http://www.wsdot.wa.gov/localprograms).

Consultant selection shall provide for maximum open and free competition and should provide opportunities for small and disadvantaged business enterprises to obtain an equitable share of the work, consistent with the project scope and capabilities of available small and disadvantaged owned firms.

A&E consultants may be solicited for:

1. A specific project.
2. A specific stage of a project (i.e., Design Report).
3. Engineering services (i.e., supporting services of an Agency's staff in studies, design).
4. For more than one project (i.e., several small bridge design projects) or multiple phases of a single project.
5. Or a combination of the above.

**.11a Multi-Phase Projects** – In the case of projects covering two or more distinct phases, when the cost for the second phase depends on decisions reached during the first phase, the agreement should cover only the first phase. The agreement for preliminary engineering should state that the consultant may be considered for subsequent phases provided this option was identified in the advertised solicitation. The consultant's engagement to complete subsequent phases depends upon the consultant's satisfactory performance on prior work and upon negotiation of an agreement for the subsequent phase(s). The Agency is not obligated to use the same consultant firm for all phases. Separate consultant agreements may be considered for each phase (e.g., one for preliminary engineering and another for construction engineering).

**.11b Environmental Assessment/Environmental Impact Statement/Environmental Classification Summary** – The first agreement would include preliminary engineering through final approval of the environmental documents. Preparation of the PS&E could be under a separate agreement with continuation of the original consultant at the option of the Agency, provided this was stated in the original advertisement.

**.11c Engineering Management Consultants** – While an engineering management consultant may assist an Agency in fulfilling its responsibilities, the Agency cannot delegate these responsibilities to a consultant or to another Agency. A consultant serving in a management role for an Agency, and then managing consultant agreements with its own firm, is a conflict of interest.

**.12 Advertise the Need for A&E Consultant Services** – State law, [RCW 39.80](#), requires that each Agency must advertise that Agency’s requirement(s) for architectural services, land surveying services, or engineering services. An Agency can comply with these requirements by publishing an announcement on each occasion when A&E consultants are required by the Agency.

The need for consultant services must be advertised at least one day per week for two consecutive weeks (14 day minimum) in the area newspaper used for publication of legal notices. A three week minimum response time from the initial date of publication should be provided to consultants. These advertisements may be supplemented by additional advertisements in special interest publications such as the Daily Journal of Commerce, trade magazines, or publications utilized by disadvantaged business enterprises.

Agencies may also publish an announcement for emergent need contracts. There are four disciplines in which an agency may advertise for and award contracts to multiple firms to assist agencies if unexpected needs arise during construction. These disciplines include:

- **Geotechnical** – Investigations include the assessment of the risk to humans, property and the environment from natural hazards such as earthquakes, landslides, sinkholes, soil liquefaction, debris flows and rockfalls.
- **Hydraulics** – These activities include roadways threatened by a river and/or the occurrence of scour.
- **Archeological** – Investigations include surveying the construction site and analyzing any findings if construction activities caused disturbance to potential cultural resources or human skeletal remains.
- **Environmental** – These activities involve contacting resource agencies, documenting all construction activities that may require mitigation and monitoring in-water work activities

Agencies would award contracts to several firms that meet the required criteria. Agencies will then rotate work through all of the firms selected. These agreements will be for a **one year** period of time and will include a “not to exceed” dollar amount. An agency may extend the agreement for one additional year provided the original dollar amount was not exceeded.

**.12a Advertisement Content** – The advertisement should contain the following information (see [Appendix 31.91](#) for an advertisement example):

1. A project title and estimated start and end date.
2. The scope and nature of the project, including technical requirements for which services are required and the address of a representative of the Agency who can provide further details.
3. Solicitations of qualification statements, referred to as Requests for Qualifications (RFQ) from consultants, must incorporate a clear and accurate description of the technical requirements for the service to be procured, including any special conditions or certifications required. (Example Submittal Information Forms to obtain consultant qualifications for Prime and Subconsultants are contained in [Appendix 31.92\(a\)](#) and [31.92\(b\)](#), respectively.)

4. Solicitations must clearly set forth sufficient detail on how applicant qualifications will be evaluated. These may include but are not limited to key personnel, firm experience, ability to meet schedule, past performance, in-house expertise, familiarity with WSDOT/FHWA standards, and DBE approach and commitment.
5. Nonengineering service applicants should be asked to provide estimates for the man-hours and classifications needed to complete the project.
6. In the event that a project covers multiple phases (see [Section 31.11a](#)), the Agency is not obligated to utilize the original consultant for subsequent phases. If the Agency desires this option, the advertisement must state the possibility of a multi-phase agreement at the discretion of the contracting Agency.
7. All prospective consultants must be advised that federally funded projects will be held to Federal EEO requirements.
8. Consultants will also be held to ADA and Civil Rights language for the employing Agency.
9. **Local Agencies must be in compliance with Chapter 28 and their Title VI Agreement. Therefore, when advertising for Consultant Services, the following Title VI language must be included in advertisement:**

**“The (Local Agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin or sex in consideration for an award.”**

1. Response due date.
2. Publication dates.

Specific project cost estimates shall not be requested until a consultant has been selected.

**.13 A&E Consultant Evaluation and Selection Process** – The Local Agency must establish guidelines for technical evaluation of the qualifications received, determination of finalists for the purpose of written or oral discussions, and selection for agreement award. Consultants will be selected based upon the qualifications they present. For A&E related services, fees for services cannot be considered during the selection process.

One of the following must be utilized as part of the consultant selection process:

1. **“Live” Interviews and Presentation of the RFQ by Consultant Individuals or Teams** – This provides interaction with the Agency and showcases the consultant’s presentation skills. This approach is best for larger, more complex projects, but does increase travel time and costs to the applicant. Video presentation or teleconferencing may be considered as an alternative to reduce travel costs.

2. **Telephone Interviews** – This provides for interaction but eliminates travel time and cost. This approach is useful for smaller projects.
  - A. Exceptions to the competitive process used for consultant selection:
    1. **Subsequent Phasing** – Selection of a consultant to perform subsequent project phases may only occur if this option was advertised originally (i.e., Phase 1 Preliminary Engineering, Phase 2 Right of Way, Phase 3 Construction Engineering).
    2. **Contract Amendments** – Amendments that do not significantly alter the scope of work can be renegotiated with the existing consultant. However, this should not be used to avoid the responsibility of providing competition for consultant selection.
    3. **Emergency** – To address a set of unforeseen circumstances beyond the Agency’s control which present a real, immediate threat to the proper performance of essential functions, or may result in the material loss or damage to property, bodily injury, or loss of life if immediate action is not taken (see [Chapter 33](#)).
    4. **Sole Source** – Sole source agreements may be requested from Local Programs when the consultant provides professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The Local Agency must provide the Region Local Programs Engineer written justification (see [Appendix 31.93](#)) for requesting this option based upon:
      - a. The unique nature of the services and/or the unique qualifications, abilities, or expertise of the consultant to meet the Agency’s needs (e.g., are they highly specialized or one-of-a-kind? What is their past performance, their cost effectiveness (learning curve), and/or the follow-up nature of the required services?).
      - b. Other special circumstances that may be relevant such as confidential investigations, copyright restrictions, or time constraints.
      - c. Availability of consultants in the location required. Local Programs must approve all consultant procedures that are exceptions to the competitive process
  - B. **Documentation of Selection** – Following consultant selection, the Local Agency shall retain the following documentation in the project file:
    1. The names of a minimum of three consultants considered for the work (excluding exceptions detailed above).
    2. Consultant selected and reasons why this consultant was chosen over the others.
    3. Prior to executing an agreement agencies must verify consultant status with the *System for Award Management* (SAM) at [www.sam.gov/portal/public/sam](http://www.sam.gov/portal/public/sam) to determine if the consultant has been excluded from bidding on a federal aid contract. SAM is the electronic version of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs (Lists), which identifies those parties that have been suspended,

debarred, or otherwise excluded from bidding on federal procurement and nonprocurement contracts. Consultant agreements awarded to firms listed on the Excluded Parties Listing will not be eligible for federal aid reimbursement.

## 31.2 Non-A&E Professional Services Consultants

Professions outside the fields described in [RCW 39.80](#) may provide such consulting services such as long range planning and studies, economic analyses, and real estate activities. These consulting services are provided through professional services agreements ([RCW 39.26](#)). The basic difference between professional services and A&E consultants is that consultant fees may be considered in selecting professional services consultants, but cannot be considered in selecting A&E services consultants.

Real Estate consulting activities include acquisition, relocation, appraisal, appraisal review and property management and can be contracted under a Non A&E professional services agreement under authority of [RCW 39.26](#).

The Local Agency is to work with Local Programs Real Estate section on right of way non-A&E professional services agreements.

**.21 Determine the Need for Professional Services Consultants** – Before an Agency advertises for a professional services consultant, the agency must have a clear definition of the work to be accomplished. This includes identification of:

1. The nature and scope of effort required.
2. The technical requirements and qualifications of the consultant services needed.
3. The level of funding resources available.
4. The time frame for performing the work.
5. The expected results and products to be received.
6. An independent agency cost estimate (see [Appendix 31.94](#)).
7. The establishment of consultant contract DBE goal.

If assistance is needed in describing the desired scope of work, the Agency should seek information from the Region Local Program Engineer or from other Local Agencies that have had similar projects.

The Agency should develop selection guidelines for all to understand, because selection of the most qualified consultant firm is based upon evaluations by the Agency. The selection criteria should enable the Agency to identify and select the consultant best qualified to meet the Agency's needs and ensure that the selected consultant understands and provides the Agency's needs in the most cost-effective manner.

The Agency should determine the type of agreement to be developed with the consultant. (This may be modified during negotiations with the selected consultant.) The basic agreement types are lump sum, cost plus fixed fee and negotiated hourly rates, (see [Section 31.42](#)).

Consultant selection shall provide for maximum open and free competition and should provide opportunities for small and disadvantaged business enterprises to obtain an equitable share of the work, consistent with the project scope, and capabilities of available small and disadvantaged owned firms.

Professional Services consultants may be solicited for:

1. A specific study (i.e., Economic Study).
2. A specific project (i.e., Acquisition of Real Estate).
3. A specific task (i.e., Real Estate negotiations).
4. Or a combination of the above.

**.22 Advertise the Need for Professional Services Consultants** – State law ([RCW 39.26](#)) requires that each Agency must competitively solicit that Agency’s requirement for professional services. An Agency can comply with these requirements by using a competitive solicitation process that provides an equal and open opportunity to qualified parties.

The need for consultant services must be advertised at least one day per week for two consecutive weeks (14 day minimum) in the area newspaper used for publication of legal notices. A three week minimum response time from the initial date of publication should be provided to consultants. These advertisements may be supplemented by additional advertisements in special interest publications such as the Daily Journal of Commerce, trade magazines, or publications utilized by disadvantaged business enterprises.

**.22a Advertisement Content** – The advertisement should contain the same information listed in [Section 31.12a](#) (see [Appendix 31.91](#) for an advertisement example).

**.23 Professional Services Consultant Evaluation and Selection Process** – The Local Agency must establish guidelines for technical evaluation of the qualifications received, determination of finalists for the purpose of written or oral discussions, and selection for agreement award. Consultants will be selected based upon the qualifications they present. Fees may be considered as an evaluation factor in the professional services selection process, but it is not a “low-bid” consultant selection where the low bidder wins the contract automatically.

One of the following is required as part of the consultant selection process:

1. **Written Response Only to the Request for Qualifications (RFQ)** – This approach is best for smaller, clearly defined projects, or projects which are heavily reliant upon their written presentation such as environmental reports.
2. **“Live” Interviews and Presentation of the RFQ by Consultant Individuals or Teams** – Provides for interaction with the Agency and showcases the consultant’s presentation skills. This approach is best for larger, more complex projects but does increase travel time and costs to the applicant. Video presentation or teleconferencing may be considered as an alternative to reduce travel costs.
3. **Telephone Interviews** – Provides for interaction but eliminates travel time and cost. This approach is useful for smaller projects.

Exceptions to the competitive process used for consultant selection:

4. **Sole Source** – Sole source agreements may be requested from Local Programs when the consultant provides professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The Local Agency must provide the Region Local Programs Engineer written justification (see [Appendix 31.93](#)) for requesting this option based upon:
  - A. The unique nature of the services and/or the unique qualifications, abilities, or expertise of the consultant to meet the Agency's needs (e.g., are they highly specialized or one-of-a-kind? what is their past performance, their cost effectiveness (learning curve), and/or the follow-up nature of the required services?).
  - B. Other special circumstances that may be relevant such as confidential investigations, copyright restrictions, or time constraints.
  - C. Availability of consultants in the location required.
5. **Emergency** – To address a set of unforeseen circumstances beyond the Agency's control which present a real, immediate threat to the proper performance of essential functions or may result in the material loss or damage to property, bodily injury, or loss of life, if immediate action is not taken (see [Chapter 33](#)).
6. **Contract Amendments or Added Scope (beyond the original advertisement)** – Amendments that do not significantly alter the scope of work can be renegotiated with the existing consultant. However, this should not be used to avoid the responsibility of providing competition for consultant selection.

Local Programs must approve consultant procedures that are exceptions to the competitive process.

**.24 Document Selection** – Following consultant selection, the Local Agency shall retain the following documentation in the project file:

1. The names of a minimum of three consultants considered for the work (excluding exceptions detailed above); and
2. Justification for the consultant selected, including the reasons why this consultant was chosen over the others.

Prior to executing an agreement agencies must verify consultant status with the System for Award Management (SAM) at [www.sam.gov/portal/public/sam](http://www.sam.gov/portal/public/sam) to determine if the consultant has been excluded from bidding on a federal aid contract. SAM is the electronic version of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs (Lists), which identifies those parties that have been suspended, debarred, or otherwise excluded from bidding on federal procurement and nonprocurement contracts. Consultant agreements awarded to firms listed on the Excluded Parties Listing will not be eligible for federal aid reimbursement.

### 31.3 Establishment of Consultant Roster

To efficiently obtain consultant services, a process for developing and maintaining a consultant “Roster” is necessary. Agencies may establish and maintain a continuous “Roster” to which interested and qualified firms may apply. This “Roster” **must** be maintained annually.

Each agency **must** submit the “Roster” selection procedures to the Regional Local Program Engineer for **review and approval**. The “Roster” selection procedures must address the following:

1. Process of invitation to be included on the “Roster”.
2. Process of encouraging firms to submit or update qualifications and performance data.
3. Guidelines for technical evaluation and ranking of firms to establish the “Roster”.
4. Threshold and formal process for Second Tier competition (see WSDOT
5. [Consultant Service Manual](#) Appendix Y).
6. Nondiscrimination/equal opportunity for DBE consultants

When using the “Roster”, the federal aid project must be identified prior to the consultant selection process. No “Roster” consultant may be awarded more than one federal aid contract from the “Roster” at a time. When active contracts are complete, the consultant’s name will be returned to “available” status.

### 31.4 Negotiation With Selected Firm, A&E, and Non-A&E Professional Services

The Local Agency will notify the consultant of their selection in writing, meet with the consultant to reach a complete and mutual understanding of the scope of services, and begin negotiations on the terms of the agreement.

In this meeting with the selected consultant, the Local Agency should include key people with appropriate technical expertise within the Agency to ensure that their concerns are addressed. The following are typically discussed while developing an agreed upon scope of services:

1. A list of meetings the consultant is expected to attend, expected location of the meetings, and key personnel.
2. The anticipated design schedule. The Local Agency shall designate the basic premises and list criteria to be used in design development.
3. Any special services required.
4. Complexity of the design.
5. Safety and operational considerations.
6. Environmental considerations.
7. Survey and geotechnical testing requirements.
8. Inspection services during construction.
9. Quality control during construction.

10. Preparation of forms, letters, and documents.
11. Property map preparation.

**.41 Agency Preparation for Negotiations** – Following receipt of the consultant's proposal, Agency responsibilities include:

Compare the consultant's proposal with the Agency's own estimate, examining the scope of work, work hours, and estimate of cost. (See [Appendix 31.94](#), Independent Estimate for Consulting Services, DOT Form 140-012.) The Agency is to prepare its independent cost estimate using:

1. The salary rates by position from the consultant's Payroll Register.
2. Multiplying these by the Agency's estimates of staff hours by position for work elements.
3. Apply the consultant's overhead rate and profit/fixed fee (see below) to develop the total project staff cost estimate.

The Agency will use this independent estimate, along with estimates of nonsalary costs, to negotiate the agreement with the consultant.

1. Ensure the consultant has divided the project into work units and related time units in such a manner that the estimate can be readily reviewed for work hours, rates of pay, overhead, profit, and itemized direct nonsalary costs.
2. Request records to confirm the consultant's rates (i.e., their Payroll Register, giving payroll rates by name and position of staff working on the project).
3. Request the consulting firm's indirect cost rate from the WSDOT Consulting Services Office (see Section 31.6 for indirect cost rate details).
4. Calculate the consultant's profit/fixed fee amount. WSDOT's procedure for calculating this is described in [Consultant Services Manual M 27-50](#), Appendix AA. The fee is determined through evaluation of the following:
  - A. Degree of risk.
  - B. Relative difficulty of work.
  - C. Size of job.
  - D. Period of performance.
  - E. Assistance of agency.
  - F. Subconsulting.
  - G. An acceptable profit for a federally funded project may not exceed 15 percent of the total of direct labor plus overhead costs or the fixed fee/profit percentage may not exceed 35 percent of direct labor costs only. Maximum allowable profit percentage rates (20 to 35 percent) are reserved for the most difficult, complex, and risky projects. Mark-ups are not allowed on direct "nonsalary" costs.

- H. A Management Reserve Fund (MRF) may be established to be used for:
1. Overruns of direct salary and overhead costs that might occur under the existing scope of work, or
  2. The consultant to perform additional work that is outside the agreement or supplement's scope of work (but within the scope of the advertised project).

The maximum MRF set up at the beginning of the agreement is \$100,000 or 10 percent of the agreement, whichever is less. If the original MRF is less than \$100,000, the MRF may be increased by preparing a supplement to a total accumulative amount that cannot exceed \$100,000, (or exceed the cumulative 10 percent). An MRF cannot be included in a Lump Sum agreement. The Agency cannot authorize, and the consultant cannot utilize, the MRF until a task order is set up. To set up a task order, the Agency and consultant must negotiate the scope, schedule, and budget for the increase in direct salary and overhead costs, or the increase in additional work to use all or a portion of the MRF.

5. Record and retain an explanation of differences in work hours or costs between the Agency's independent estimate and the negotiated consultant fee.

**.42 Agreement Types/Payment Options** – The following are the types of agreements that contain acceptable methods of payment for FHWA funded projects. Consultant agreements are available at [www.wsdot.wa.gov/localprograms](http://www.wsdot.wa.gov/localprograms).

1. **Lump Sum** – This type of agreement is only appropriate where the scope of work (quantity and type) can be clearly defined in advance. It is not recommended for construction engineering agreements. The agreement should state the exact service to be provided within a specific time frame, and when the lump sum payment is to be made. Payments may also be paid in installments as the work proceeds.
  - Scope of work changes and Management Reserve Funds are not allowed with this type of payment.
  - Lump sum payments are generally used for investigations, studies, and basic services on design projects. A qualified representative for the Agency must prepare, date, and sign an estimate detailing the hours required for each type of work, as well as the hourly rate. Lump Sum contracts cannot be supplemented.
2. **Actual Costs Plus a Fixed Fee** – This type of agreement is used when the extent, scope, complexity, character, or duration of the work cannot be reasonably determined in advance. The consultant is reimbursed for all eligible direct and indirect costs within defined limits, plus a predetermined amount as a fixed fee. The costs for methods 1-3 above are determined by:
  - A. Salaries of employees with time directly chargeable to the project and salaries of principals for the time they are productively engaged in work necessary to fulfill the terms of the agreement. Actual rates of pay for employees and principals actively involved in the project will be included in each agreement.
  - B. Direct nonsalary costs incurred in fulfilling the terms of the agreement. Travel costs, (excluding air, train, and rental car costs), shall be in accordance with the Agency's travel rules and procedures. Air, train and rental car costs shall be reimbursed in accordance with 48 CFR Part 31.205-46 "Travel Costs."

- C. The consultant's overhead schedule must be prepared in compliance with CFR Part 31. The indirect costs must be allowable, allocable, and properly segregated. "Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles." 23 CFR 172.11(b)(1)
- D. Management reserve funds are an Agency option and are to address overruns of direct salary and overhead costs that might occur under the existing scope of work or a need for additional work beyond the existing agreement scope of work, but within the advertised project scope of work.
- E. Profit/fixed fee is derived by considering the degree of risk, relative difficulty of work, size of job, period of performance, assistance by the Agency, and subconsulting assumed by the consultant at the time of the negotiations (see [Section 31.41](#)).

Shown as exhibits to the agreement are the consultant's estimate of work, direct labor rates, indirect cost rate and fixed fee.

- 3. **Specific Rates of Pay** – This type of agreement is based upon specific rates of pay for each class of employee and is appropriate for relatively minor items of work of indeterminable extent. This method requires constant and direct control of the time and class of employees used by the consultant. This rate of pay is established through:
  - A. **Negotiated Hourly Rate** – The rate of pay is established through use of the consultant firm's payroll register, the indirect cost rate obtained from WSDOT's Consultant Services Office, plus the calculation of the consultant's profit/fixed fee. (See [Section 31.41](#) for guidance in developing the independent estimates of these costs for use in negotiations with the consultant firm.) The following items also apply to negotiated hourly rate agreements.
    - 1. Direct nonsalary costs incurred in fulfilling the terms of the agreement. Travel costs, (excluding air, train, and rental car costs), shall be in accordance with the Agency's travel rules and procedures. Air, train, and rental car costs shall be reimbursed in accordance with 48 CFR Part 31.205-46 "Travel Costs." The consultant's overhead schedule must be prepared in compliance with 48 CFR Part 31. The indirect costs must be allowable, allocable and properly segregated.
    - 2. Profit/fee is derived by considering the degree of risk, relative difficulty of work, size of job, period of performance, assistance by the Agency, and subconsulting assumed by the consultant at the time of the negotiations (see [Section 31.41](#)). "Fixed fee means a sum expressed in U.S. dollars established to cover the consultant's profit and other business expenses not allowable or otherwise included as a direct or indirect cost." 23 CFR 172.3

Prime consultants cannot markup subconsultants contracts, however the fee (profit) should be negotiated to reflect a percentage of subcontracting relative to the percentage of work by the prime consultant. Subcontracting is then one of several considerations when determining a reasonable profit. Justification for the profit should be included in the record of contract negotiations.

**.43 Agency/Consultant Negotiations** – Negotiate an agreement with the selected consultant and retain a record of these negotiations (see [Appendix 31.95](#)). Negotiations may include the following:

1. The Agency negotiator and the consultant meet in person or by telephone and go over any significant areas of discrepancy between the Agency estimate and consultant proposal. Either the consultant satisfactorily explains differences or agrees to address concerns in a revised proposal.
2. The Agency reviews revised proposals and revises their detailed cost analysis accordingly. Steps 1 and 2 are repeated, if required.
3. The consultant submits a final fee proposal.
  - A. Provide a final offer in writing.
    1. The final agreement must specify the maximum amount payable.
    2. The basis for establishing the maximum amount should be documented.
    3. Procedures for adjustments to the maximum amount to accommodate changes in the work distribution or workload shall be explained.
  - B. When unresolved differences exist between the consultant and Local Agency, the Agency shall notify the Region Local Programs Engineer. The Local Programs Engineer will review and confirm that the Agency has followed all the required procedures and will notify the Agency of the finding. The Agency will then notify the consultant in writing that negotiations are terminated and proceed to the next highest ranked consultant to begin the negotiation process again. Negotiation steps and records will be repeated with the alternate consultant selected.

### 31.5 Consultant Agreements, Exhibits, and Supplements to Agreements, A&E, and Non-A&E Professional Services

When the **total cost** of consulting services (including supplements) is \$10,000 or more, Local Agencies must use the Local Agency Standard Consultant Agreements. (Consultant Agreement forms are available online at [www.wsdot.wa.gov/localprograms](http://www.wsdot.wa.gov/localprograms). The agreement completion date establishes the last possible date the consultant may work, and be paid for that work, utilizing federal funds. **Any work performed after expiration of the agreement will be considered non-federally participating.** It is of the utmost importance that the Agency monitors the project completion date and extend the date by supplemental agreement, if appropriate, **prior** to the completion date.

The time period for completion of the agreement is dependent upon the complexity of the project's scope of work. The duration may vary from two years for a relatively simple project, to six or more years for a complex project having multiple phases of work.

#### **.51 Vacant**

**.52 Supplements to the Agreements** – An agreement shall be supplemented in writing when work that falls outside the scope of the original agreement is requested, when supplemental language to the consultant agreement is desired, or when there is a need for time extension or wage adjustment. This may be done by a supplemental agreement only when the agreement completion date has not expired. (Supplemental

Agreement forms are available online at [www.wsdot.wa.gov/localprograms](http://www.wsdot.wa.gov/localprograms).) The work in the supplement must have been included in the advertisement for consultant services regarding the original agreement.

The supplemental agreement should include:

1. A statement that the original agreement will be supplemented to add/change/amend conditions.
2. A scope of work described in sufficient detail to clearly outline what additional work the consultant is to do or what changes are authorized to the existing scope.
3. The method of payment, i.e., cost-plus-fixed-fee, specified hourly rate, daily rate, and any indirect cost. (**Note:** Always include a maximum amount payable.) Section V of the original agreement should be reviewed prior to negotiating any supplements.
4. A specific time for beginning/continuing work under the supplement and completing the project in calendar days or day and month of the year.
5. A summary of the estimated costs of the original agreement plus those of the supplement(s).
6. Provisions that give both parties of the agreement the authority to act.
7. Specific rates of pay shall be established for the supplemental agreement in the same manner as described in [Section 31.42](#), Agreement Types/Payment Options, Sub-Part d, Specific Rates of Pay.

**.53 Patent or Royalty Rights** – Agreements that involve research, developmental, experimental, or demonstration work may include patent or royalty rights. In this case, the Consultant Agreement should be supplemented by adding the appropriate language to account for this. The Region Local Programs Engineer is to be contacted for assistance in developing these supplemental agreements.

**.54 Risk Management and Added Insurance Requirements** – The Agency may change Section XII of the Consultant Agreement to reduce the requirement for the Consultant Professional Liability from one million dollars to the amount of the Agreement; whichever is the lesser of the two. This should be done for work that involves minimal risk, such as studies. For many consultant firms, covering the one million dollar liability would be an added cost to their overhead or directly to the project.

In the event the Agency determines that added liabilities or an insurance policy are warranted beyond the amount allowed in the consultant agreement, they should negotiate this with the Consultant after the selection process is complete. This ensures that engineering qualifications, rather than the ability to obtain insurance, is the criteria for selection.

The Agency will determine the sufficiency of insurance normally provided within the consultant's overhead costs, and will identify the costs beyond that amount on Exhibit H. This exhibit is not needed if the consultant agreement provisions are used.

These costs will be considered direct project costs, and will not be billed to an FHWA funded project. In the event that Exhibit H is warranted, it should be sent with the risk analysis to the Region Local Programs Engineer for approval, who will forward it to Headquarters for review, prior to execution by the Agency and the consultant.

The Agency risk analysis should show that the work warrants this added cost and that consideration has been given to less costly solutions, including assuming the risk; insuring the risk outside of the agreement as an Agency cost; or adding a third tier of engineering overview to check the work.

To calculate the risk requires an ability to judge the likely amount of a jury's award if liability is determined. A suggested method is to determine the number of comparative cases presently existing within this state and to develop the probabilities based upon historic awards.

## 31.6 Indirect Cost Rates

The Agency will utilize a consultant's Indirect Cost Rate (ICR) that is compliant with 48 CFR Part 31 of the Federal Acquisition Regulation (FAR), or has been approved through the Safe Harbor Indirect Cost Rate Pilot Program.

"Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles." 23 CFR 172.11(b)(1)

Once the ICR is established, "A consultant's accepted indirect cost rate for its 1-year applicable accounting period shall be applied to contracts; however, once an indirect cost rate is established for a contract, it may be extended beyond the 1-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or contract award." 23 CFR 172.11(b)(3)(vi)

If a consultant does not have a FAR compliant ICR, it is their responsibility to review the eligibility requirements of the Safe Harbor program ([www.wsdot.wa.gov/Audit/SafeHarbor.htm](http://www.wsdot.wa.gov/Audit/SafeHarbor.htm)).

Consulting firms that use the Safe Harbor Rate will still be required to have an accounting system capable of accumulating and tracking direct labor and other direct costs by contract, segregating indirect costs, and removing unallowable costs. These basic accounting system functions are essential for accurate billing of costs under a cost-reimbursement contract. Additionally, the expectation will be for the firm to establish a cost history for the eventual development of a FAR compliant indirect cost rate for the firm, based on actual cost data.

Consultants who do not qualify or choose not to enroll in the Safe Harbor will be subject to a review by the WSDOT Consultant Service Office (CSO). CSO will utilize a risk assessment process to provide WSDOT the necessary assurance that the consultant's accounting practices are FAR compliant. There are multiple tools that consultants may submit to assist CSO review such as the following:

- An audit conducted by another governmental agency that conforms to 48 CFR Part 31;
- An audit conducted by an independent CPA that conforms to 48 CFR Part 31
- A WSDOT approved ICR provided by the Internal Audit Office (IAO)

If the consultant does not have any of the above, the consultant may submit their ICR schedule to the CSO for review. The CSO will perform a review of the consultant's proposed rate using the 48 CFR part 31 to adjust line item costs on the ICR and determine a provisional ICR rate. The CSO will notify the consultant of these adjustments. The consultant will decide whether these adjustments are fair and reasonable and notify the CSO whether they agree or disagree with the determination.

If the consultant does not have an ICR, the CSO may establish a provisional ICR of 100% and a recommended fixed fee of 10% or less of direct labor and overhead. This rate would be effective from the end of the consultant's fiscal year plus 180 days.

During that time it is expected that the consultant will develop an ICR which would conform to the requirement outlined in 48 CFR Part 31. Each firm has the option of providing an Indirect Cost Rate or qualifying for the Safe Harbor program. Please choose one of those options listed below and provide the documentation listed with your request for a rate. Incomplete submission of documents for review will not be evaluated.

#### **For the Safe Harbor Program**

Documents needed include:

- Labor Checklist
- Examples of timesheets
  - For smaller firms – one for each person

Link to Safe Harbor: [www.wsdot.wa.gov/Audit/SafeHarbor.htm](http://www.wsdot.wa.gov/Audit/SafeHarbor.htm)

#### **CSO review of an Indirect Cost Rate**

Documents needed include:

- Indirect Cost Rate Schedule (ICR)
- FHWA Certification Document
- Consultant Information Worksheet
- Timesheet & Labor System Checklist

All requests for the Safe Harbor Program or for an Indirect Cost Rate review must be sent to [ConsultantRates@wsdot.wa.gov](mailto:ConsultantRates@wsdot.wa.gov), include the words "Local Programs" in the subject line of your email. The following information must also be included:

- Number of active local agency contracts, including the contract amount.
- Number of local agency contracts, including the contract amount for the previous fiscal year.

The documents listed above are available at [www.wsdot.wa.gov/localprograms](http://www.wsdot.wa.gov/localprograms).

### 31.7 Submittal of Consultant Contract Data

After the execution of the consultant contract, the local agency must submit the following information to the Region Local Program Engineer within **30 days** of execution:

- A signed copy of the Local Agency Consultant Agreement
- Exhibit B – DBE Participation
- Exhibit D – Prime Consultant Cost Computations
- Exhibit E – Sub-consultant Cost Computations
- Diversity Management & Compliance System (DMCS) contact information as follows,

<b>Agency</b>	<b>Contractor</b>
Name:	Name:
Title:	Title:
Phone:	Phone:
Email:	Email:

Failure to submit the above listed information, before work begins, will result in delay of reimbursement of the billed cost, until the information is received.

### 31.8 Oversight of the Agreement and Project Closure

The Local Agency shall assign one of its personnel as project administrator to work with the consultant. The project administrator's responsibilities are to:

1. Prepare supplements to existing agreements for services beyond the scope of the original agreement and include the Agency's independent estimate of the costs for the work involved.
2. Ensure that no work is done or costs incurred until the agreements and supplements are approved by the approving authority and executed by the proper parties.
3. Conduct regular meetings with the consultant to track progress, evaluate consultant's progress in achieving its commitments as identified in its DBE Participation Plan, and identify potential concerns.
4. Act as a liaison between the Agency and the consultant to assure compliance with the terms of the agreement, including OEO provisions and the use of mandatory forms.
5. Monitor the consultant's progress reports to ensure that problem areas are reported and corrective action taken.
6. Make sure that all work is within the agreement's scope of work.
7. Establish controls to monitor the time for completion of the agreement to ensure that the specified time limitations are not exceeded.
8. Ensure the accuracy of bills presented by the consultant and their consistency with the work performed.

9. Maintain cumulative cost records to assure that costs are allowable, allocable, and reasonable. Track bills to ensure compliance with agreement and fixed fees.
10. Review bills to ensure that the appropriate Indirect Cost Rate is being applied.
11. Establish controls to prevent overpayment of the agreement.
12. Enter monthly payments received from Local Agency and payments made to all firms into the WSDOT Diversity Management and Compliance System – DMCS (wsdot.diversitycompliance.com).
13. Monitor the DBE's for the duration of the agreement (i.e., conduct DBE on-site reviews). The Local Agency must comply with the requirements as described in Chapter 26. Termination or substitution of DBE's shall be submitted to the Region Local Program Engineer for concurrence prior to executing the contract supplement.
14. Ensure that all terms and conditions of the agreement have been met prior to final release of the consultant.

**.81 Invoicing** – The invoice will include the following:

1. All employees who worked on the project during the billing period;
2. The classification of each employee, the hours worked, the actual hourly payroll rate, and the amount billed; and
3. Direct nonsalary costs. Nonsalary costs should be supported for auditing purposes by copies of the invoice or billing instruments the consultant received for payment. Either the consultant or the Agency may retain these copies.

The Local Agency may disallow claimed cost, which are not adequately supported by documentation.

**.82 Documentation** – Original documents may include but are not limited to signed time sheets, invoices, payroll records, rental slips, and gasoline tickets that support the costs billed to WSDOT. In compliance with 48 CFR part 31, the consultant is responsible for maintaining records, including supporting documentation that costs claimed have been incurred and are allocable to the agreement. Time sheets should document hours worked, the billing rate of pay, and must be signed by the supervisor or his designee and the employee. Records will be retained for a period of three years after receipt of final payment.

**.83 Closure** – Upon completion of the work under the consultant agreement, the Agency will ensure that all terms, conditions of the agreement have been complied with and that all services to be performed under the agreement have been completed prior to final release of the consultant. The Local Agency should evaluate the consultant's performance and retain this in their records (see [Appendix 31.96](#)).

**.84 Alleged Consultant Design Error** – There may be times during a construction contract that a potential error or omission in the design is discovered. Other times an error or omission is discovered after the work is completed. [Appendix 31.97](#) establishes the procedures to follow if this occurs.

**.85 Consultant Claim Procedures** – Most contract claims are based on requests for additional payment beyond what was agreed to when the consultant agreement was executed. There are two circumstances that usually lead to this request:

- The first is when the consultant's understanding of the consultant agreement expectations is different than that of the local agency.
- The second is when the consultant has been asked, or believes they have been asked, to perform work outside the original scope work.

[Appendix 31.98](#) outlines the procedures to be followed by both the consultant and the agency to consider a potential claim.

## 31.9 Appendices

- [31.91](#) Advertisement – Example
- [31.92\(a\)](#) Submittal Information Form (Prime)
- [31.92\(b\)](#) Submittal Information Form (Subconsultant)
- [31.93](#) Request for Sole Source Consultant Services
- [31.94](#) Independent Estimate for Consulting Services
- [31.95](#) Record of Negotiations – Example
- [31.96](#) Performance Evaluation Consultant Services
- [31.97](#) Alleged Consultant Design Error Procedures
- [31.98](#) Consultant Claim Procedures
- [31.99](#) Consultant Draft scope and Independent Cost Estimate example

# Appendix 31.91 Advertisement – Example

## (AGENCY NAME) NOTICE TO CONSULTANTS FOR (PROJECT NAME)

The (AGENCY NAME) solicits interest from consulting firms with expertise in Civil and Structural Engineering Design. This agreement will be for approximately (TIME FRAME) in duration with the option for the (AGENCY NAME) to extend it for additional time and money if necessary. Consultants will be considered for the following project.

The (AGENCY NAME) reserves the right to amend terms of this “Request for Qualifications” (RFQ) to circulate various addenda, or to withdraw the RFQ at any time, regardless of how much time and effort consultants have spent on their responses.

### **Project Description**

The work to be performed by the CONSULTANT consists of preparing preliminary engineering design for improvements to 36th Street East to Rainier Boulevard East. The proposed improvements include widening the road to accommodate four lanes of traffic, improving intersection radii, increasing left turn storage, revisions to existing signal systems in order to accommodate the proposed improvements, and construction of retaining walls to provide for roadway widening. This project has (*insert assigned UDBE agreement goal, if a voluntary goal was assigned, insert Voluntary 10% SBE*) goal. The major features of the project are as follows:

- Approximately 1.74 miles of widening for two additional lanes.
- Improving intersection radii to meet design standards.
- Environmental documentation and preparation of permit applications.
- Signal modifications and design.
- Structural design for retaining walls and culvert extensions/replacements.
- Determination of R/W needs and R/W plan preparation.

The (AGENCY NAME) reserves the right to retain the services of the successful firm(s) for any subsequent phases (R/W, CN) associated with this/these project(s).

### **Evaluation Criteria**

Submittals will be evaluated and ranked based on the following criteria:

- 1) Qualification of Proposed Project Manager
- 2) Qualifications/Expertise of Firm
- 3) Ability to meet schedule
- 4) Approach to project
- 5) Familiarity with WSDOT/FHWA standards
- 6) Past Performance/References
- 7) Approach to meet the DBE goal or SBE goal (DBE Participation Plan or SBE Plan)

### **Submittal**

Submittals should include the following information: Firm name, phone and fax numbers; Name of Principal-in-Charge and Project Manager; and Number of employees in each firm proposed to project.

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Please submit FOUR copies of your Statement of Qualifications to: (*AGENCY NAME, ADDRESS, and CONTACT PERSON*) no later than 10:00 a.m. on June 28, 2015. Submittals will not be accepted after that time and date. Any questions regarding this project should be directed to (*AGENCY CONTACT PERSON*), at (*AGENCY PHONE*).

**Americans with Disabilities Act (ADA) Information**

The (*AGENCY NAME*) in accordance with Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA), commits to nondiscrimination on the basis of disability, in all of its programs and activities. This material can be made available in an alternate format by emailing (*AGENCY CONTACT PERSON*) at (*EMAIL ADDRESS*) or by calling collect (*AGENCY PHONE*).

**Title VI Statement**

The (*AGENCY NAME*) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.”

Dates of publication in the (*NEWSPAPER of RECORD*): (*Date of first publication*), and (*Date of second publication*).

# Chapter 34 *Local Bridge Program*

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## 34.1 General Discussion

The primary objective of the Local Bridge Program (LBP) is to ensure public safety through inspection, rehabilitation, and replacement of bridges that meet the requirements for inclusion in the National Bridge Inventory (NBI) as defined by the National Bridge Inspection Standards (NBIS). The bridges that would be eligible for rehabilitation and or replacement using federal funds are described in [Section 34.41](#).

This chapter describes the national requirements for bridge inspection programs and for selecting bridge projects to be funded using federal funds.

## 34.2 Bridge Condition Inspection Program

A methodical Bridge Inspection Program is required for agencies that want to qualify for LBP funds.

The Federal Highway Administration (FHWA) has set the national standards for the proper safety inspection and evaluation of bridges in a document called the National Bridge Inspection Standards (NBIS). These standards are located in the Code of Federal Regulations, Title 23 Highways Part 650, Subpart C. The latest electronic version of the NBIS can be found online at [www.fhwa.dot.gov/bridge/](http://www.fhwa.dot.gov/bridge/). Information and guidance on bridge condition inspection in Washington State is located in the [Washington State Bridge Inspection Manual](#) (WSBIM) M 36-64. Reference these documents for additional information on the following subjects. In the event of conflicting information or requirements between the [WSBIM](#) and [Sections 34.2](#) and [34.3](#) of this manual, the [WSBIM](#) will govern.

**.21 Delegation of Bridge Program Manager Status** – Each State Transportation Department is required to have an Inspection Organization responsible to inspect, or cause to be inspected, all highway bridges located on public roads that are fully or partially within the State’s boundaries, except for bridges owned by Federal agencies. The WSDOT Local Agency Bridge Engineer has been delegated as the Program Manager for county and city owned bridges. The NBIS contains provisions to allow further delegation of bridge program functions identified in §650.307(c)(2) to qualified Local Agency bridge program personnel. See [Appendix 34.54](#).

**.22 Bridge Inspection Types and Frequencies** – Each structure in the National Bridge Inventory (NBI) shall receive a routine inspection at intervals not to exceed 24 months except as provided in the NBIS.

Inspection frequency requirements are listed in Section §650.311 of the NBIS. These requirements are also outlined in the flowchart in [Appendix 34.52](#) and are detailed in the [WSBIM](#). The Local Programs Bridge Inventory Engineer will perform quarterly reviews of the Local Agency Bridge Inventory to ensure that bridge inspections are being performed on time. Local Agencies will be provided with lists of bridges and the projected inspection dates to cross check with their own inspection list to ensure concurrence and identify any omissions. Bridges shall be inspected in the calendar month that is the result of the current inspection month plus the assigned inspection frequency in months. This usually means the inspection will happen in the same calendar month for future inspection years. The inspection update should be entered into the inventory within 30 days. This allows Local Programs to monitor inspection progress and provides

a record of inspection date compliance. Once inspections are performed, Local Agencies have 90 days to finish the inspections report and have the data released to the NBI.

Local Agencies will be notified of bridge records that do not have current inspection dates because the field inspection has not been done or because the information has not been released to the NBI. This notification will be first in the form of email or other correspondence with the Local Programs Bridge Office. If corrections are not made within 30 days of notification, the second notification will be a formal letter of noncompliance from the Local Programs Engineering Service Manager with a corrective action plan. Finally, failure to carry out the corrective action plan will result in formal notification from the Director, Local Programs that federal funds may be restricted until compliance is met.

**.23 Qualification of Bridge Inspection Personnel** – Federal regulations specify the requirements for two positions within a Bridge Inspection organization:

- Bridge Program Manager – hereafter Program Manager
- Bridge Inspection Team Leader – hereafter Team Leader

The Program Manager is the individual charged with managing a specific bridge program and who has been delegated the duties of ensuring timely bridge inspection and reporting and that bridge records are current and valid. The Program Manager provides overall leadership and guidance to bridge program personnel.

Minimum Qualifications for Program Manager are:

- Registered Professional Engineer or 120 months of bridge inspection experience
- Successful completion of FHWA approved Comprehensive Bridge Inspection Training Course

The **Team Leader** is the individual in charge of an inspection team and is responsible for planning, preparing, and performing bridge inspections. The Team Leader is required to be onsite for all condition inspection activities on NBI bridges, and is responsible for inspection reporting and for accurate inventory coding. Qualified Team Leaders are certified by WSDOT and are issued an inspector identification number. Noncertified bridge inspectors are not allowed to submit bridge inspection data for NBI bridges to the inventory.

Minimum Qualifications for Team Leader are:

- Qualified Program Manager
- Or, 60 months of bridge inspection experience and successful completion of FHWA approved Comprehensive Bridge Inspection Training Course
- Or, Certified Level III or IV NICET bridge safety inspector and successful completion of FHWA approved Comprehensive Bridge Inspection Training Course
- Or, BS degree in engineering, and successfully passed EIT, and 24 months Bridge Inspection experience, and successful completion of FHWA approved Comprehensive Bridge Inspection Training Course
- Or, Associates degree in engineering, and 48 months bridge inspection experience, and successful completion of FHWA approved Comprehensive Bridge Inspection Training Course

Program Manager and Team Leader qualification requirements are listed in Section §650.309 of the NBIS and are outlined in the chart in [Appendix 34.51](#). The time requirements listed for qualification are measured by the actual time spent performing the designated activity or related tasks not by calendar years.

All applications for Program Manager delegation and Team Leader certification will be reviewed and approved by Local Programs. Program Manager delegation is issued to an individual within a specific agency that meets the qualifications, not to the agency (see [Appendix 34.54](#) to review the Bridge Program Manager Agreement). If a Bridge Program Manager leaves agency employment, and the agency desires delegation of another Program Manager, delegation to another qualified person within the agency is required (see [Section 34.21](#)). Certification of Bridge Program Manager status will be sent by hard copy letter. Bridge Inspector Team Leader certification will be acknowledged through an email response and by activation of Certified Bridge Inspector privileges in the inspection software provided by WSDOT. Any bridge certification will become part of the “Staff Qualification” file required for all bridge program personnel and which will be checked on an annual basis and during Quality Assurance (QA) reviews.

WSDOT maintains a list of qualified inspection service consultants which is available through Local Programs. Private consultants wanting to provide in-service bridge inspection services must have bridge inspectors that have been certified by WSDOT staff.

**.24 Continued Certification of Bridge Inspection Personnel** – Each Program Manager and Team Leader must participate in a 40 hour continuing education program to maintain certification. This program requires the following during a five-year period:

- 40 hours of bridge related training including WSDOT sponsored bridge training, bridge conferences, and other NHI Bridge Training courses.
- An approved Bridge Inspector Refresher Training course.
- Field evaluation performed by WSDOT Local Programs during QA reviews or by an agency’s Bridge Program Manager with the approval of the WSDOT Local Programs Bridge Engineer (see [Section 34.3](#)).

The expiration date of Program Managers and Team Leaders privileges are listed under Account settings in the inspection software that are updated by Local Programs after verification that the continuing education requirements have been met. Qualification reviews are performed annually and as well as the formal process during the file review during the QA process outlined under [Section 34.3](#).

Visit the Local Programs Bridge Services website at [www.wsdot.wa.gov/LocalPrograms/Bridge/Training.htm](http://www.wsdot.wa.gov/LocalPrograms/Bridge/Training.htm).

**.25 Bridge Inspection Records and File Requirements** – Bridge owners are required to maintain a complete and current official bridge file for each structure included in the NBI. This file is to be maintained throughout the life of the bridge. [Chapter 2](#) of the [WSBIM](#) and [Appendix 34.55](#) list the requirements for each official bridge file and detailed guidance on what to include. In addition, the latest version of the *American Association of State Highway and Transportation Officials (AASHTO) Manual for Bridge Evaluation* (MBE), has been incorporated by reference in the NBIS. See NBIS Section §650.313(d).

Agencies must identify bridges requiring special attention and must keep these Master Lists with the official bridge files. Lists of bridges that require special inspections such as, Fracture Critical Member Inspections, Underwater Inspections, and Complex Bridge Inspections or are singled out for deficiencies such as Load Posting or having been determined Scour Critical should be included on Master Lists.

Additionally, each local agency is required to maintain a current file on each member of the Inspection staff detailing their experience and training.

**.26 Bridge Load Ratings** – All NBI bridges, including new structures, require load ratings which must be stamped and signed by the Professional Engineer charged with overall responsibility for the analysis. These ratings shall be performed in accordance with the guidelines within Chapter 6 of the AASHTO MBE and must be placed in the official bridge file as discussed in [Section 34.25](#). If the current load rating is suspect because of condition changes or added dead load, a new rating shall be performed and the bridge inventory updated within 90 days of the inspection. Bridges must be posted or restricted when the maximum load carrying capacity drops below the maximum unrestricted legal load. Additional load rating requirements are available in [Chapter 5](#) of the [WSBIM](#). Once it has been determined that an in-service bridge can no longer carry legal loads, load restriction signs shall be installed within 30 days including an update to the Local Agency Bridge Inventory with correct coding that reflects the diminished bridge capacity. The inventory update shall include a photo of the posting for confirmation purposes. Load ratings for new bridges are eligible for LBP funds and should be included in the contract for bridges funded under this program. Load Ratings shall be available for inclusion in the bridge inventory record no later than 90 days from the time the bridge is put in service.

**.27 Bridge Scour Analysis** – A scour evaluation is required for each bridge over water. [Chapter 5](#) of the [WSBIM](#) provides guidance on performing this evaluation. The scour analysis must also yield the federal scour code as detailed in [Chapter 2](#) of the [WSBIM](#) under the Washington State Bridge Inventory System (WSBIS) Item Number 1680. This evaluation becomes part of the official bridge file discussed in [Section 34.25](#).

Plans of action for monitoring as well as scour repair plans are required for all bridges determined to be “scour critical” or to have unknown foundations. A plan of action (POA) has these primary components:

1. Development and implementation of a monitoring program.
2. Instructions regarding the type and frequency of inspections to be made at the bridge.
3. A schedule for the timely design, and construction of scour countermeasures (e.g., riprap).

Each documented plan of action should address each of these components and explain why the preferred actions were chosen. (See [Chapter 5](#) of the [WSBIM](#) for more detailed information on what should be included in each POA).

**.28 Critical Damage Bridge Repair Reports** – A Critical Damage Bridge Repair Report must be completed whenever a bridge is identified as having significant structural damage causing emergency load restrictions, lane closure, bridge closure, or if a bridge has failed. See additional guidance for uses of Critical Damage Bridge Repair Reports in Chapter 6 of the [WSBIM](#).

The WSDOT Local Programs Bridge Engineer must be notified by telephone or email within one working day of identification of a problem. This notification starts a series of reports that are ultimately forwarded to FHWA. This series of reports allows the local agency, Local Programs, and FHWA to track the status of critically damaged bridges until the damage is resolved by repair or replacement of the bridge. See [Chapter 6](#) of the [WSBIM](#) for contact information, timelines, forms and procedures.

### 34.3 Quality Assurance and Quality Control Reviews

Local Programs conducts Quality Assurance and Quality Control (QA/QC) reviews of local agency bridge programs statewide to:

- Verify that local agency bridge inspection programs maintain a high degree of accuracy and consistency.
- Identify future training needs.
- Ensure compliance with the NBIS.

Quality Assurance (QA) is defined per [23 CFR 650.305](#) as “the use of sampling and other measures to assure the adequacy of quality control procedures in order to verify or measure the quality level of the entire bridge inspection and load rating program.” A QA review must be done by someone outside the work group.

Quality Control (QC) is defined as “procedures that are intended to maintain the quality of a bridge inspection and load rating at or above a specified level.”

The Local Programs Bridge Inventory Engineer continually performs routine Quality Control reviews on the data contained in the Local Agency Bridge Inventory. Queries are run on all bridge inventory data for verification of data consistency and correct data field correlation. In addition, updated bridge inspection data prepared by the bridge owners receives an in-depth review and corrections are made before releasing new data to the bridge inventory. The remote aspect of the QC review process is extended to incorporate additional bridge file components as they become available electronically through the bridge inspection software. This process produces a more efficient and complete review of the Agency’s program during the actual field visits.

Quality Assurance reviews are a formal review that is conducted a minimum of once every five years. This formal review consists of both a bridge file review and the field review as detailed below. See [Appendix 34.57](#) for a copy of the checklist used by Local Programs for this review.

The detailed documented policies and procedures used by Local Programs for the QA/QC reviews are located in [Chapter 7](#) of the [WSBIM](#).

**Local Agency Quality Control** – Each agency that has been delegated Program Manager Responsibilities by WSDOT shall have written quality control procedures in place to ensure that data submitted to the Local Agency Bridge Inventory is accurate and complete. The agency’s quality control procedures must be on file and, at a minimum, comply with the QC requirements outlined in [Chapter 7](#) of the [WSBIM](#) and be approved by the WSDOT Local Programs Bridge Engineer.

## 34.4 Local Bridge Program Call for Projects

Counties and cities are invited to submit bridge projects to Local Programs in response to the Local Bridge Program Call for Projects. These bridge projects must meet the federal eligibility requirements in [Section 34.41](#).

The specific application requirements may vary from biennium to biennium and will be outlined in the actual Call for Projects.

**.41 Local Bridge Program Eligibility** – A bridge project must fulfill the following federal criteria to be eligible for funding:

1. The bridge must be more than 20 feet in length measured along the centerline.
2. It must be recorded in the Washington State Bridge Inventory System (WSBIS).
3. For replacement and rehabilitation, the bridge must be structurally deficient (SD) with sufficiency ratings as follow:
  - a. For Replacement: less than 40
  - b. For Rehabilitation: 80 or less
4. Seismic-Paint-Scour – Eligible activities may be funded for bridges regardless of sufficiency rating. However, bridges must be scour critical or have unknown foundations to be eligible for scour projects. Routine maintenance is not eligible for funding.
5. No replacement or rehabilitation projects can have been performed using funds in the past 10 years. There is no moratorium following Seismic-Paint-Scour projects, however, the intent of this funding is for the repair to last at least 10 years.
6. Bridges with structurally deficient decks (Deck Overall codes of 4 or less) are eligible for rehabilitation regardless of sufficiency rating. The 10-year moratorium will not disqualify the candidate. However, once the deck has been replaced or rehabilitated, the 10-year rule will apply.

The Federal Highway Administration (FHWA) has developed a formula that calculates sufficiency ratings and assigns SD or FO designations. This computation is performed by the WSBIS using inventory and inspection data submitted by state and local agency bridge inspectors. The sufficiency rating is based on four factors: structural adequacy and safety, serviceability and functional obsolescence, essentiality for public use, and special reductions. Ratings can range from 0 (worst) to 100 (best). Deteriorated bridges that are in poor condition are considered Structurally Deficient (SD) and bridges with geometric configurations that are below current standards for the route they serve are considered Functionally Obsolete (FO). A sufficiency rating generator is included as part of the Bridge Works Bridge Inspection software which is available for download at [www.wsdot.wa.gov/localprograms/bridge/bridgeworks.htm](http://www.wsdot.wa.gov/localprograms/bridge/bridgeworks.htm).

**.42 Bridge Replacement Design Standards** – Bridges shall be designed in accordance with [Chapter 42](#) and the following criteria:

1. **Live Load** – Load and Resistance Factor Design (LRFD) HL 93.
2. **Vertical Clearances** – Clearance over roadways is a minimum 16.5 feet. Clearance over railroads is a minimum 23.5 feet.
3. **Design-Year ADT** – Will be determined per [Section 43.21](#).
4. **Bridge Length** – The length of the replacement bridge can be affected by one or both of the following factors:
  - a. The bottom of the superstructure will be 3 feet above the 100 year flood or as determined by field review.
  - b. The abutment and pier locations(s) of a new bridge generally reduce the existing backwater elevation. The acceptable rise in the backwater elevation should meet state or local jurisdictional regulations as applicable.
5. **Bridge Type** – The bridge type selected will be the most economical type for the span length needed, based on sound engineering judgment and/or economics.
6. **Bridge Foundation Type** – The type and depth of the foundation elements will depend on the results of the geotechnical and hydraulic analyses and shall be considered scour safe (WB76-80 coded 8 or 9).

Both a load rating and a scour analysis for a new bridge shall be provided for the official bridge file. The scour analysis will consist of a summary of the hydraulic design as justification for the scour safe code.

**.43 Bridge Rehabilitation Criteria** – To qualify as a rehabilitation project, the total rehabilitation costs shall not exceed 70 percent of the replacement costs. Rehabilitation projects will be subject to the following requirements:

1. Structural deficiencies will be removed.
2. Structure will be brought up to current standards.
3. Completed bridge must load rate at or above an H-15 inventory rating.

**.44 Seismic-Paint-Scour** – Project eligibility and priority ranking is based on the Washington State Bridge Management System (BMS) element data. See [Chapter 4](#) of the [WSBIM](#) for BMS information.

**.45 Eligible Bridge Costs** – The following are eligible bridge costs:

1. **Bridge Construction** – All items typically detailed by bridge designers (concrete, rebar, piling, barriers, expansion dams, etc.).
2. **Bridge Aesthetics** – Limited to the treatment required in the approved NEPA documents. Typically, paints or pigmented sealers and fractured fin finishes on concrete structures will not be approved.
3. **Demolition** of existing structure(s).
4. **Detour** – All work items required to accommodate the construction of the new bridge.
5. **Traffic Control for the Work Zone** – Prorated by costs of bridge vs. approach work.

6. **Structural Excavation and Backfill for Bridge** – Includes abutments, wing walls, footings, cofferdams, etc.
7. **Riprap Protecting Bridge Structure Within the Right of Way** – Riprap placed within the right of way to protect the structure can be considered a bridge item.
8. **Approach Slab** – The approach slab is a reinforced concrete element that protects the bridge and abutments from impacts and can be considered a bridge item.
9. **Approach Guardrail Transition Section** – Approach guardrail systems are installed in accordance with Standard Plans and are considered a bridge item provided site conditions do not require unusually long transitions.
10. **Retaining Walls** (up to 20 feet maximum distance from the abutment) – Retaining walls are structural elements that serve the same functions as the standard bridge wing walls and are designed by bridge designers. Retaining walls beyond these limits would not be considered bridge items.
11. **Bridge Drainage** – Including components necessary to carry water from the structure.
12. **Environmental Mitigation** – Prorated for the bridge, demolition of existing structure, and/or detours.
13. **Mobilization** – Prorated by costs of bridge and approach work.

Approach costs will be limited to 15 percent of the above items.

**.46 On-Site Field Review of Candidates** – The on-site field review team verifies the condition of the bridge, review site information, and possibly requests updated or additional information. The field review is also an opportunity for the bridge owner to provide additional information related to up-front project scoping and analysis done prior to the call for projects.

- a. **Field Review Team** – The Field Review Team consists of the WSDOT Local Programs Bridge Engineer (Review Team leader), a local agency bridge owner representative, the Region Local Programs Engineer, and FHWA Division Bridge Engineer whenever possible. On non-CA agency bridges, the Field Review Team will also have a representative from the agency providing CA services for the non-CA agency. The Local Programs Bridge Engineer may add other representatives as deemed appropriate for specialized conditions.
- b. **Review Procedures**
  1. The Field Review Team conducts an on-site review of proposed bridge projects. The Field Review Team may use results of a previous review for a bridge submitted but not funded, provided the review was conducted within the past three years.
  2. The Bridge Inspection Report is reviewed at the site. The Field Review Team looks for inconsistencies between condition codes, load ratings, postings, ADT, and other factors. The WSDOT Local Programs Bridge Engineer calculates an independent sufficiency rating based on codes agreed to by the review team. The final sufficiency rating may change again based on information requested by the team but not available during the field review.

3. The items submitted with the application are reviewed at the site. The Field Review Team reviews the site in detail and recommends which of three funding program best fits the condition of the bridge.
  - a. Replacement projects.
  - b. Rehabilitation projects.
  - c. Seismic-Paint-Scour-Deck Repair.
4. A consensus is reached on the appropriate funding program and estimated scope of work for the project.
5. The project cost estimate submitted by the agency is discussed in detail and revised as appropriate.

**.47 Bridge Selection** – A local bridge advisory committee convenes after the on-site field reviews are completed with the local agencies. A suggested list of bridge projects are presented to the committee in order of sufficiency rating, results of the field review, review team recommendations, and other pertinent information. The committee reviews all of the projects and adds comments based on a statewide approach.

The Director, Local Programs approves the final list of bridge projects based upon funding levels, delivery schedules, bridge sufficiency and committee comments. Counties and cities will receive a funding notification letter informing them that their bridge project has been approved for funding. The letter will identify the anticipated federal funding level and asks the agency to submit their request for funds through their Region Local Programs Engineer. This letter will also identify the percentage for bridge approach cost participation and any other requirements specific to the project.

The committee is comprised of seven voting members and two alternates. The committee includes four county representatives, four city representatives, with the Local Programs Engineering Services Manager serving as Chair. Alternates initially serve one year as a non-voting member then for three more years as a voting member. Alternates for either city or county may participate in the event a voting member from their respective association is absent.

**.48 Project Management and Funding** – The level of funding available for the bridge program falls short of meeting all of the needs on the local roadway system. With this limited funding, it is critical that the initial scope, schedule, and budget for each project be as accurate as possible. Identification of changes to the scope, schedule or budget during project delivery need to be communicated to Local Programs, the quarterly project report is the vehicle for this communication.

Updates to the project scope schedule and budget are required for all bridge replacement and rehabilitation projects and all other projects that exceed \$2.0 million are required at 30 percent and 60 percent design.

## 34.5 Appendices

- 34.51 NBIS Regulation – Qualifications of Personnel
- 34.52 NBIS Regulation – Inspection Frequency
- 34.53 Bridge Inspector Experience and Training Record
- 34.54 Bridge Program Manager Agreement
- 34.55 Bridge Records
- 34.56 Individual Bridge Record
- 34.57 Local Agency Bridge Program Quality Assurance Checklist

# Chapter 41 General Project Types

## 41.1 General Discussion

This chapter identifies the design standards document, deviation approval authority, and design approval for a specific facility. The deviation process, Work Zone Safety and Mobility, and Intelligent Transportation Systems are also discussed.

This part of the manual is organized into six chapters relating to the design phase: General Design Information; City and County Design Standards for Non NHS facilities; Location and Design Approval; Plans, Specifications, and Estimates; State Advertising and Award Procedures; and Local Advertising and Award Procedures.

Compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 is required in the design, construction, operation and maintenance of transportation facilities (i.e., pedestrian facilities, park and ride lots). Where sidewalks are provided, public agencies shall provide pedestrian access features such as continuous, unobstructed sidewalks, and curb cuts with detectable warnings at highway and street crossings. See 28 CFR Part 36, Appendix A, for minimum federal requirements for curb ramps. The design standards and deviation and design approval authority are shown in the following table.

Facility	Design Standards	Deviation Approval	Design Approval
<b>Interstate</b>			
New/Reconstruction	WSDOT <i>Design Manual</i>	WSDOT/FHWA	WSDOT/FHWA
ITS Over \$1,000,000	WSDOT <i>Design Manual</i>	WSDOT HQ	WSDOT HQ
All Other	WSDOT <i>Design Manual</i>	WSDOT HQ	WSDOT Region
<b>National Highway System (NHS)</b>			
State Highways outside of incorporated cities, or on a limited access highway	WSDOT <i>Design Manual</i>	WSDOT HQ	WSDOT Region
State Highways within incorporated cities between back of curb to back of curb	WSDOT <i>Design Manual</i>	WSDOT HQ	WSDOT Region
State Highways within incorporated cities beyond curb line	*City and County Design Standards See <a href="#">Chapter 42</a>	WSDOT Local Programs	City
City Streets (non-State highways)	*City and County Design Standards See <a href="#">Chapter 42</a>	WSDOT Local Programs	City
County Roads	*City and County Design Standards See <a href="#">Chapter 42</a>	WSDOT Local Programs	County

Facility	Design Standards	Deviation Approval	Design Approval
<b>Non-National Highway Systems (Non-NHS)</b>			
State Highways outside of incorporated cities, or on a limited access highway	WSDOT <i>Design Manual</i>	WSDOT HQ	WSDOT Region
State Highways within incorporated cities between back of curb to back of curb	WSDOT <i>Design Manual</i>	WSDOT HQ	WSDOT Region
State Highways within incorporated cities beyond curb line	*City and County Design Standards See <a href="#">Chapter 42</a>	WSDOT Local Programs	City
City Streets (non-State Highways)	*City and County Design Standards See <a href="#">Chapter 42</a>	WSDOT Local Programs	City
County Roads	*City and County Design Standards See <a href="#">Chapter 42</a>	WSDOT Local Programs	County

\*Bicycle facilities and multi-use facilities per [RCW 35.75.060](#) and [36.82.145](#) must follow the current AASHTO bicycle design standards and/or standards submitted by the local agency which have been approved by Local Programs for any facility allowing bicycle traffic.

Different standards apply to the design of new construction/reconstruction, 3-R (resurfacing, restoration, and rehabilitation), and 2-R (resurfacing and restoration). Each of these terms is defined in [Chapter 42](#). Local agencies must determine which standards apply before beginning design. See [Chapter 42](#) for design standards on non-NHS routes.

See [Section 43.4](#) for information on Value Engineering.

## 41.2 Work Zone Safety and Mobility

All projects on the Interstate system must comply with [23 Code of Federal Regulations \(CFR\), Part 630, Subpart J: Work Zone Safety and Mobility](#) and [Subpart K: Temporary Traffic Control Devices](#). It is recommended that any other federally funded project over \$10 million or any project that includes a detour also apply the rules. WSDOT *Design Manual* M 22-01 [Chapter 1010](#) has a list of requirements and key elements as well as checklist for developing a formal Transportation Management Plan (TMP). A TMP is a set of strategies for managing the corridor-wide work zone impacts of a project.

## 41.3 Intelligent Transportation Systems (ITS)

Intelligent Transportation Systems (ITS) have the potential to reduce crashes and increase the mobility of transportation facilities. They also have the potential to enhance productivity through the use of advanced communications technologies and their integration into vehicles and the transportation infrastructure. These systems involve a broad range of wireless and wire line communications-based information, electronics, or information processing technologies. Some of these technologies include cameras, variable message signs, ramp meters, road weather information systems, highway advisory radios, traffic management centers, and adaptive signal control technology (ASCT). ASCT is a traffic signal system that detects traffic conditions and adjusts signal timing remotely in response.

Systems engineering is a typical part of any ITS project development process. It is required on any federal aid project that has an ITS work element, per [23 CFR 940.11](#). Systems engineering is an interdisciplinary step-by-step process for complex projects, such as ITS projects to:

- assess a system's needs and its relationship to the regional architecture.
- plan a project that meets those needs and meets stakeholder needs and expectations.
- define other specific requirements for the project/system.
- develop and implement the project/system.
- define the operations and maintenance requirements for the system.
- plan for the refinement or replacement of the system.

Using systems engineering on ITS projects has been shown to increase the likelihood of a project's success. A successful project is one that meets the project scope and stakeholder/project sponsor expectations, completed on time and within budget, and efficient and cost effective to operate and maintain.

The level of systems engineering used for a project should be on a scale commensurate with the scope, cost, and risk of the project. Complete the Intelligent Transportation Systems (ITS) Systems Engineering Analysis Worksheet in [Appendix 41.53](#), or a document with the same information, for all federal aid projects that include ITS elements. Completing the worksheet will meet the minimum requirements in [23 CFR 940.11](#) for systems engineering, determine the project's risk, and determine if a more in-depth systems engineering analysis is required.

As shown in the worksheet, a more in-depth analysis requires that the following four documents be completed and used to implement the project. These documents are produced as the result of the steps in the systems engineering process, often referred to as the "V" diagram, shown in [Appendix 41.52](#).

1. **Concept of Operations** – This document defines the problem, the project's goals, stakeholder needs and expectations, constraints, and the way the ITS system is required to operate and be maintained.
2. **System Requirements** – This document contains specifications of what the system is required to do, how well it is required to do it, and under what conditions. These requirements are based on the goals, stakeholder needs and expectations, constraints, and operation and maintenance requirements documented in the Concept of Operations.
3. **System Verification Plan** – This document describes how the agency will verify that the system proposed meets the requirements in the System Requirements document. The agency will implement the System Verification Plan to ensure that all system requirements are verified before it accepts the system.
4. **System Validation Plan** – This document describes how the agency will assess the system's performance against the goals, stakeholder needs and expectations, constraints, and operation and maintenance requirements documented in the Concept of Operations. The goal is for the agency to understand and review the strengths and weaknesses of the system and identify any new opportunities and needs if appropriate. The agency will implement the System Validation Plan after it accepts the system. This evaluation sets the stage for the next time the system/project is changed or expanded.

For more guidance on developing the four systems engineering plans listed above, see the plan templates in the FHWA - Systems Engineering Guidebook for Intelligent Transportation Systems, Version 3, November 2009. ([www.fhwa.dot.gov/cadiv/segb/files/segbversion3.pdf](http://www.fhwa.dot.gov/cadiv/segb/files/segbversion3.pdf))

Pertinent page numbers include:

- Concept of Operations Template: Page 254
- System Requirements Template: Page 257
- Verification Documents Plan Template: Page 269
- Validation Documents Plan Template: Page 278

High risk ASCT projects require the use of the USDOT Model Systems Engineering Documents for Adaptive Signal Control Technology (ASCT) Systems, FHWA-HOP-11-027, August 2012, or a later addition. Visit FHWA's ASCT webpage ([www.fhwa.dot.gov/innovation/everydaycounts/edc-1/asct.cfm](http://www.fhwa.dot.gov/innovation/everydaycounts/edc-1/asct.cfm)) to obtain this document and learn more. The Illinois Center for Transportation's Safety Benefits of Implementing Adaptive Signal Control Technology: Survey Results, 2013, provides additional information on ASCT.

For guidance on contracting for ITS projects, see [Appendix 41.54](#).

## 41.4 Deviations

**.41 General** – The Agency is authorized to design projects to the standards as indicated in the table shown in [Section 41.1](#). In the event all design standards cannot be incorporated into the design, the agency shall submit a deviation request for review and approval.

**.42 Documentation** – An agency shall document their reasons for the deviation. The deviation request shall include a description of the problem and its proposed solution and a vicinity map in sufficient detail to aid in evaluating the problem. The deviation request document is a stand alone engineering document. If references to other sources or documents are required, the document should use the appropriate quotes and excerpts as necessary.

An analysis of the engineering and financial aspects of the proposal as compared to the standard and options considered shall be provided. The analysis shall specifically address safety issues, including collision history and projections. It shall address applicable operational characteristics, including traffic speeds, traffic volumes, capacity and route continuity. It should include financial considerations such as high construction costs, unusual or extraordinary site conditions, or environmental requirements that may impact the decision. The analysis may include a Benefit/Cost comparison, and/or Life Cycle Costing of alternatives considered. The analysis should also include any other information which may be helpful as a future reference.

The level of detail of the request should be based on the relative complexity and scope of the project and the deviation requested. Requests will be considered based on the merits presented. This analysis and deviation request shall be documented and completed prior to the agency's completion of PS&E documents.

**.43 Format** – [Appendix 41.51](#) is a Deviation Analysis Format sheet for use on locally owned facilities (deviations approved by WSDOT Local Programs). Refer to the WSDOT [Design Manual](#) M 22-01 for format on all other deviations. The intent of the example is to present format only.

## 41.5 Appendices

- 41.51 Deviation Analysis Format
- 41.52 System Engineering Process “V” Diagram
- 41.53 Intelligent Transportation Systems (ITS) Systems Engineering Analysis Worksheet
- 41.54 ITS Project Contracting Guidance



# Appendix 44.76 Patented/Proprietary Items – PIF Instructions

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## Project Information

**State/Local Project Number** – For WSDOT projects, this is the work order number or WIN. For local projects, this field is for local agency use/tracking.

**Project Name** – Provide the name of the project as it is listed in the State Transportation Improvement Plan (STIP).

**Federal Aid Project Number** – This number will be assigned by WSDOT. Contact the Region Local Programs staff to obtain this number.

**NEPA Category** – Check the appropriate box:

- Environmental Impact Statement (EIS). Refer to [Subsection 24.21](#) of the *Local Agency Guidelines*.
- Categorical Exclusion (CE), Documented Categorical Exclusion (DCE), and Programmatic Categorical Exclusion (Programmatic CE). Refer to [Subsection 24.22](#) of the *Local Agency Guidelines*.
- Environmental Assessment (EA). Refer to [Subsection 24.23](#) of the *Local Agency Guidelines*.

**Region or Agency** – Fill in with the WSDOT Region or Local Agency requesting the finding.

**Amount** – Fill in the total amount of the request.

**Project of Division Interest** – Is when FHWA retains the project oversight. If not certain, contact your Region Local Programs Engineer.

## Public Interest Finding (PIF) Information

**Select Type of PIF** – Use the pull down menu to select the PIF that fits the project.

**Regulatory Reference** – This field is automatically filled in when you select the PIF.

## Justification or Supporting Information

**Goal Statement** – What is being accomplished/what is the outcome for using a Patented/Proprietary item.

**Description of Work** – Provide a detailed description of why Patented/Proprietary items are needed.

## Justification or Supporting Information

The use of trade names in specifications and on plans should be avoided. Instead, specifications should be formulated to assure full opportunity for competition among equivalent materials, equipment, and methods. Specifying patented or proprietary material, products or processes is allowed for federal aid projects only under one of the following conditions:

- At least three names of acceptable materials or products, are listed together with a list of the required features and specifications that will be considered equal to the listed items.
- The agency is requiring a specific material or product and a written Public Interest Finding (PIF) document has been prepared and approved by Local Programs.
- The material or product has been approved through FHWA as an experimental feature.

### Cost Effectiveness Determination

- Attach a detailed estimate for the Patented/Proprietary items (see [Appendix 44.81](#)).
- Provide an explanation of cost effectiveness (see [Appendix 44.83](#)).

### Schedule Issues – N/A

### Buy America Compliance

- Steel and iron that is permanently incorporated into the project shall consist of American-made materials, as outlined in the required GSP.
- The local agency must include a provision containing the “Buy-America” requirements in each contract. These general special provisions are included in the WSDOT Amendments and General Special Provisions publication.
- Purchase of foreign steel and iron products by local agencies for installation on a federally funded project is not allowed without an approved Public Interest Finding from Local Programs.
- The agency must ensure the requested Patented/Proprietary Items meet the current “Buy America” requirements and must document the sources of steel and iron by having a “Certification of Materials Origin” on file.

### Environmental – N/A

### NEPA/SEPA Logical Termini & Independent Utility – N/A

### Conclusion

- A brief summary of the overall benefits and cost effectiveness.
- Approval by WSDOT Local Programs is required.
- Approval is dependent on demonstration of overall cost effectiveness and public benefit. The determination is not solely dependent on cost savings.
- At least one signature from the local agency is required.

## **Appendix 44.77 Two-Week Advertisement – PIF Instructions**

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### **Project Information**

**State/Local Project Number** – For WSDOT projects, this is the work order number or WIN. For local projects, this field is for local agency use/tracking.

**Project Name** – Provide the name of the project as it is listed in the State Transportation Improvement Plan (STIP).

**Federal Aid Project Number** – This number will be assigned by WSDOT. Contact the Region Local Programs staff to obtain this number.

**NEPA Category** – Check the appropriate box:

- Environmental Impact Statement (EIS). Refer to [Subsection 24.21](#) of the *Local Agency Guidelines*.
- Categorical Exclusion (CE), Documented Categorical Exclusion (DCE), and Programmatic Categorical Exclusion (Programmatic CE). Refer to [Subsection 24.22](#) of the *Local Agency Guidelines*.
- Environmental Assessment (EA). Refer to [Subsection 24.23](#) of the *Local Agency Guidelines*.

**Region or Agency** – Fill in with the WSDOT Region or Local Agency requesting the finding.

**Amount** – Fill in the total amount of the request.

**Project of Division Interest** – Is when FHWA retains the project oversight. If not certain, contact your Region Local Programs Engineer.

### **Public Interest Finding (PIF) Information**

**Select Type of PIF** – Use the pull down menu to select the PIF that fits the project.

**Regulatory Reference** – This field is automatically filled in when you select the PIF.

### **Justification or Supporting Information**

**Goal Statement** – Why is there a need for a two-week advertisement.

**Description of Work** – Provide a summary description of project.

## Justification or Supporting Information

### Cost Effectiveness Determination

- Attach a summary level estimate.
- Provide project schedules (documenting both three-week and two-week advertisement) showing the benefits of reducing the advertisement period.

**Schedule Issues** – Explain how the agency will deliver the project and describe the benefits to the public for reducing the advertisement period.

### Buy America Compliance

- Steel and iron that is permanently incorporated into the project shall consist of American-made materials, as outlined in the required GSP.
- The local agency must include a provision containing the “Buy-America” requirements in each contract. These general special provisions are included in the WSDOT Amendments and General Special Provisions publication.
- Purchase of foreign steel and iron products by local agencies for installation on a federally funded project is not allowed without an approved Public Interest Finding from Local Programs.
- The agency must document the sources of steel and iron by having a “Certification of Materials Origin” on file.

**Environmental** – N/A

**NEPA/SEPA Logical Termini & Independent Utility** – N/A

### Conclusion

- A brief summary of the overall benefits and cost effectiveness.
- Approval by WSDOT Local Programs is required.
- Approval is dependent on demonstration of overall cost effectiveness and public benefit. The determination is not solely dependent on cost savings.
- At least one signature from the local agency is required.

# Appendix 44.78      **Mandatory Use of Borrow or Disposal Site – PIF Instructions**

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## **Project Information**

**State/Local Project Number** – For WSDOT projects, this is the work order number or WIN. For local projects, this field is for local agency use/tracking.

**Project Name** – Provide the name of the project as it is listed in the State Transportation Improvement Plan (STIP).

**Federal Aid Project Number** – This number will be assigned by WSDOT. Contact the Region Local Programs staff to obtain this number.

**NEPA Category** – Check the appropriate box:

- Environmental Impact Statement (EIS). Refer to [Subsection 24.21](#) of the *Local Agency Guidelines*.
- Categorical Exclusion (CE), Documented Categorical Exclusion (DCE), and Programmatic Categorical Exclusion (Programmatic CE). Refer to [Subsection 24.22](#) of the *Local Agency Guidelines*.
- Environmental Assessment (EA). Refer to [Subsection 24.23](#) of the *Local Agency Guidelines*.

**Region or Agency** – Fill in with the WSDOT Region or Local Agency requesting the finding.

**Amount** – Fill in the total amount of the request.

**Project of Division Interest** – Is when FHWA retains the project oversight. If not certain, contact your Region Local Programs Engineer.

## **Public Interest Finding (PIF) Information**

**Select Type of PIF** – Use the pull down menu to select the PIF that fits the project.

**Regulatory Reference** – This field is automatically filled in when you select the PIF.

## **Justification or Supporting Information**

**Goal Statement** – What is being accomplished/what is the outcome for using Mandatory Borrow or Disposal Site.

**Description of Work** – Provide a detailed description of work to be done.

## Justification or Supporting Information

**Cost Effectiveness Determination** – Provide an explanation of cost effectiveness or benefits.

**Schedule Issues** – Explain how the agency will deliver the project and describe if there is a benefit to the public.

### Buy America Compliance

- Steel and iron that is permanently incorporated into the project shall consist of American-made materials, as outlined in the required GSP.
- The local agency must include a provision containing the “Buy-America” requirements in each contract. These general special provisions are included in the WSDOT Amendments and General Special Provisions publication.
- Purchase of foreign steel and iron products by local agencies for installation on a federally funded project is not allowed without an approved Public Interest Finding form Local Programs.
- The agency must document the sources of steel and iron by having a “Certification of Materials Origin” on file.

**Environmental** – N/A

**NEPA/SEPA Logical Termini & Independent Utility** – N/A

### Conclusion

- A brief summary of the overall benefits and cost effectiveness.
- Approval by WSDOT Local Programs is required.
- Approval is dependent on demonstration of overall cost effectiveness and public benefits. The determination is not solely dependent on cost savings.
- At least one signature from the local agency is required.

## Appendix 44.79 Agency Supplied Equipment – PIF Instructions

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### Project Information

**State/Local Project Number** – For WSDOT projects, this is the work order number or WIN. For local projects, this field is for local agency use/tracking.

**Project Name** – Provide the name of the project as it is listed in the State Transportation Improvement Plan (STIP).

**Federal Aid Project Number** – This number will be assigned by WSDOT. Contact the Region Local Programs staff to obtain this number.

**NEPA Category** – Check the appropriate box:

- Environmental Impact Statement (EIS). Refer to [Subsection 24.21](#) of the *Local Agency Guidelines*.
- Categorical Exclusion (CE), Documented Categorical Exclusion (DCE), and Programmatic Categorical Exclusion (Programmatic CE). Refer to [Subsection 24.22](#) of the *Local Agency Guidelines*.
- Environmental Assessment (EA). Refer to [Subsection 24.23](#) of the *Local Agency Guidelines*.

**Region or Agency** – Fill in with the WSDOT Region or Local Agency requesting the finding.

**Amount** – N/A

**Project of Division Interest** – Is when FHWA retains the project oversight. If not certain, contact your Region Local Programs Engineer.

### Public Interest Finding (PIF) Information

**Select Type of PIF** – Use the pull down menu to select the PIF that fits the project.

**Regulatory Reference** – This field is automatically filled in when you select the PIF.

### Justification or Supporting Information

**Goal Statement** – What is being accomplished/what is the outcome for using agency supplied equipment.

**Description of Work** – Provide a detailed description of equipment being used.

## Justification or Supporting Information

**Cost Effectiveness Determination** – Provide an explanation of cost effectiveness or benefits.

**Schedule Issues** – Explain how the agency will deliver the project and describe if there is a benefit to the public.

### Buy America Compliance

- Steel and iron that is permanently incorporated into the project shall consist of American-made materials, as outlined in the required GSP.
- The local agency must include a provision containing the “Buy-America” requirements in each contract. These general special provisions are included in the WSDOT Amendments and General Special Provisions publication.
- Local Agency must identify the Agency Supplied Material meets the requirements of 23 CFR 635.410 (Buy America). In the event the Agency Supplied Material contains small amount of foreign steel or iron products, the agency shall document the amount of foreign materials and prepare a project specific special provision to information the bidders the cost of such foreign materials.
- The agency must document the sources of steel and iron by having a “Certification of Materials Origin” on file.

**Environmental** – N/A

**NEPA/SEPA Logical Termini & Independent Utility** – N/A

### Conclusion

- A brief summary of the overall benefits and cost effectiveness.
- Approval by WSDOT Local Programs is required.
- Approval is dependent on demonstration of overall cost effectiveness and public benefits. The determination is not solely dependent on cost savings.
- At least one signature from the local agency is required.

## Appendix 44.80 Agency Supplied Material – PIF Instructions

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### Project Information

**State/Local Project Number** – For WSDOT projects, this is the work order number or WIN. For local projects, this field is for local agency use/tracking.

**Project Name** – Provide the name of the project as it is listed in the State Transportation Improvement Plan (STIP).

**Federal Aid Project Number** – This number will be assigned by WSDOT. Contact the Region Local Programs staff to obtain this number.

**NEPA Category** – Check the appropriate box:

- Environmental Impact Statement (EIS). Refer to [Subsection 24.21](#) of the *Local Agency Guidelines*.
- Categorical Exclusion (CE), Documented Categorical Exclusion (DCE), and Programmatic Categorical Exclusion (Programmatic CE). Refer to [Subsection 24.22](#) of the *Local Agency Guidelines*.
- Environmental Assessment (EA). Refer to [Subsection 24.23](#) of the *Local Agency Guidelines*.

**Region or Agency** – Fill in with the WSDOT Region or Local Agency requesting the finding.

**Amount** – Fill in the total amount of the request.

**Project of Division Interest** – Is when FHWA retains the project oversight. If not certain, contact your Region Local Programs Engineer.

### Public Interest Finding (PIF) Information

**Select Type of PIF** – Use the pull down menu to select the PIF that fits the project.

**Regulatory Reference** – This field is automatically filled in when you select the PIF.

### Justification or Supporting Information

**Goal Statement** – What is being accomplished/what is the outcome for using agency supplied materials.

**Description of Work** – Provide a detailed description of why agency supplied materials are needed.

## Justification or Supporting Information

### Cost Effectiveness Determination

- Attach a detailed estimate for the material supplied (see [Appendix 44.81](#)).
- Provide an explanation of cost effectiveness or benefits.

**Schedule Issues** – Explain how the agency will deliver the project and describe if there is a benefits to the public.

### Buy America Compliance

- Steel and iron that is permanently incorporated into the project shall consist of American-made materials, as outlined in the required GSP.
- The local agency must include a provision containing the “Buy-America” requirements in each contract. These general special provisions are included in the WSDOT Amendments and General Special Provisions publication.
- Purchase of foreign steel and iron products by local agencies for installation on a federally funded project is not allowed without an approved Public Interest Finding form Local Programs.
- The agency must document the sources of steel and iron by having a “Certification of Materials Origin” on file.

**Environmental** – N/A

**NEPA/SEPA Logical Termini & Independent Utility** – N/A

### Conclusion

- A brief summary of the overall benefits and cost effectiveness.
- Approval by WSDOT

Local Programs is required.

- Approval is dependent on demonstration of overall cost effectiveness and public benefits. The determination is not solely dependent on cost savings.
- At least one signature from the local agency is required.
- Local Agency staff responsible for purchasing must comply with Washington State procurement procedures in accordance with [RCW 39.26](#) - Procurement of Good and Services.

# Appendix 44.81 Local Agency Force Work– PIF Instructions

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## Project Information

**State/Local Project Number** – For WSDOT projects, this is the work order number or WIN. For local projects, this field is for local agency use/tracking.

**Project Name** – Provide the name of the project as it is listed in the State Transportation Improvement Plan (STIP).

**Federal Aid Project Number** – This number will be assigned by WSDOT. Contact the Region Local Programs staff to obtain this number.

**NEPA Category** – Check the appropriate box:

- Environmental Impact Statement (EIS). Refer to [Subsection 24.21](#) of the *Local Agency Guidelines*.
- Categorical Exclusion (CE), Documented Categorical Exclusion (DCE), and Programmatic Categorical Exclusion (Programmatic CE). Refer to [Subsection 24.22](#) of the *Local Agency Guidelines*.
- Environmental Assessment (EA). Refer to [Subsection 24.23](#) of the *Local Agency Guidelines*.

**Region or Agency** – Fill in with the WSDOT Region or Local Agency requesting the finding.

**Amount** – Fill in the total amount of the request.

**Full Oversight** – Is this an FHWA full oversight project? If not certain, contact your Local Programs Engineer.

## Public Interest Finding (PIF) Information

**Select Type of PIF** – Use the pull down menu to select the PIF that fits the project.

**Regulatory Reference** – This field is automatically filled in when you select the PIF.

## Justification or Supporting Information

**Goal Statement** – What is being accomplished/what is the outcome for the work being completed by local forces.

**Description of Work** – Provide a detailed description of work to be done by agency forces.

## Justification or Supporting Information

### Cost Effectiveness Determination

- Attach a detailed estimates of expected Contract Construction and Agency Force costs. Cost for Contract Construction should be based on unit price history. Agency Force cost estimates need to detail labor, equipment, materials, and agency overhead costs (see example).
- The local agency must comply with the appropriate design, construction, and material quality standards.
- The local agency must be able to obtain and document the same level of quality that is required for competitively bid contracts.
- Provide an explanation of cost effectiveness or benefits.

**Schedule Issues** – Explain how the agency will deliver the project and describe if there is a benefit to the public.

### Buy America Compliance

- Steel and iron that is permanently incorporated into the project shall consist of American-made materials, as outlined in the required GSP.
- The local agency must include a provision containing the “Buy-America” requirements in each contract. These general special provisions are included in the WSDOT Amendments and General Special Provisions publication.
- Purchase of foreign steel and iron products by local agencies for installation on a federally funded project is not allowed without an approved Public Interest Finding Form Local Programs, to the limit allowed by the “Buy America” General Special Provision.
- The agency must document the sources of steel and iron by having a “Certification of Materials Origin” on file.

**Environmental** – N/A

**NEPA/SEPA Logical Termini & Independent Utility** – N/A

### Conclusion

- A brief summary of the overall benefits and cost effectiveness.
- Approval by WSDOT Local Programs is required.
- Approval is dependent on demonstration of overall cost effectiveness and public benefit. The determination is not solely dependent on cost savings.
- At least one signature from the local agency is required.

**ATTACHMENT "A"**

**Cost Effectiveness Determination • Continuation of Justification and Supporting Information**

Agency Forces (PIF)

Agency:

Project Name:

Fed Aid Number:

Agency Force Cost

Material Cost			
	Unit Cost	Quantity	Amount
Signs and Posts	100	\$ 620.00	\$ 62,000.00

Labor - Operators wage rate:

Hourly Rate: \$ 30.00

Fringe Benefit (@ 54%): \$ 16.20

Total Labor Rate: \$46.19 per hour

	Labor Cost		Equipment Cost		Total Amount
	Unit cost	Hours	Unit Cost	Hours	
Mobilization (pickup)	\$ 46.19	150	\$ 37.50	150	\$ 12,553.50
ESC Lead	\$ 46.19	15	\$ 37.50	10	\$ 1,067.85
Traffic Control	\$ 46.19	300	\$ 37.50	300	\$ 25,107.00
Remove and disposal of existing signs	\$ 46.19	150	\$ 37.50	75	\$ 9,741.00
SPCC	\$ 46.19	10			\$ 461.90
Total Labor and Equipment costs					\$ 51,743.75

Materials: \$ 62,000.00

Labor: \$ 28,868.75

Equipment cost: \$ 20,062.5

Agency Admin/Overhead cost: \$19% of Labor: \$ 5,485.05

Total Agency Force Cost: \$ 116,416.30

**ATTACHMENT "B"**  
**Cost Effectiveness Determination • Continuation of Justification and Supporting Information**

Agency Forces (PIF)

Agency:

Project Name:

Fed Aid Number:

Contract Construction Cost

<b>Item</b>	<b>Measure</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Amount</b>
Mobilization	L.S.	1	\$ 20,000.00	\$ 20,000.00
ESC Lead	Day	15	\$ 110.00	\$ 1,650.00
Project Temporary Traffic Control	L.S.	1	\$ 40,000.00	\$ 40,000.00
Permanent Signing	Each	620	\$ 200.00	\$ 124,000.00
Removal & Disposal Existing Signs	L.S.	1	\$ 10,000.00	\$ 10,000.00
SPCC	L.S.	1	\$ 500.00	\$ 500.00
Total Contract Construction Cost:				\$ 196,150.00

## **Appendix 44.82      Tied Bids – PIF Instructions**

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### **Project Information**

**State/Local Project Number** – For WSDOT projects, this is the work order number or WIN. For local projects, this field is for local agency use/tracking.

**Project Name** – Provide the name of the project as it is listed in the State Transportation Improvement Plan (STIP).

**Federal Aid Project Number** – This number will be assigned by WSDOT. Contact the Region Local Programs staff to obtain this number.

**NEPA Category** – Check the appropriate box:

- Environmental Impact Statement (EIS). Refer to [Subsection 24.21](#) of the *Local Agency Guidelines*.
- Categorical Exclusion (CE), Documented Categorical Exclusion (DCE), and Programmatic Categorical Exclusion (Programmatic CE). Refer to [Subsection 24.22](#) of the *Local Agency Guidelines*.
- Environmental Assessment (EA). Refer to [Subsection 24.23](#) of the *Local Agency Guidelines*.

**Region or Agency** – Fill in with the WSDOT Region or Local Agency requesting the finding.

**Amount** – Fill in the total amount of the request.

**Full Oversight** – Is this an FHWA full oversight project? If not certain, contact your Local Programs Engineer.

### **Public Interest Finding (PIF) Information**

**Select Type of PIF** – Use the pull down menu to select the PIF that fits the project.

**Regulatory Reference** – This field is automatically filled in when you select the PIF.

### **Justification or Supporting Information**

**Goal Statement** – What is being accomplished by a tied bid

**Description of Work** – Provide a detailed description of the work being performed under both contracts. This description should also include a purpose and need statement that explains why the project is being proposed.

## Justification or Supporting Information

**Cost Effectiveness Determination** – Provide an explanation of cost effectiveness or benefits.

**Schedule Issues** – N/A

**Buy America Compliance** – N/A

**Environmental** – Provide documentation to show that the environmental process is complete for each project.

**NEPA/SEPA Logical Termini & Independent Utility** – Attach a Vicinity Map and/or other plan sheets to show that each project has Logical Termini and Independent Utility.

- Logical termini for project development are defined as (1) rational end points for a transportation improvement, and (2) rational end points for a review of the environmental impacts.
- Independent Utility – A project must be able to function on its own, without further construction of an adjoining segment.

### Conclusion

- A brief summary of the overall benefits and cost effectiveness.
- Approval by WSDOT Local Programs is required.
- Approval is dependent on demonstration of overall cost effectiveness and public benefits. The determination is not solely dependent on cost savings.
- At least one signature from the local agency is required.

# Chapter 46 *Local Advertising and Award Procedures*

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This chapter is used by local agencies operating under Certification Acceptance ([Chapter 13](#)) and choosing to advertise and award construction contracts themselves. [Chapter 52](#) will also apply to these agencies.

Local agencies wanting to have the Washington State Department of Transportation (WSDOT) administer their construction contracts should refer to [Chapter 51](#).

## 46.1 General Discussion

Local agencies may let contracts for their projects provided that the following conditions are met:

- .11 The local agency uses the advertising and award procedures outlined in this section to advertise for bids, select the responsible bidder with the lowest responsive bid, and award the contract.
- .12 A Local Agency Agreement between the state and local agency is in effect setting forth the conditions under which the project will be constructed.
- .13 The local agency is participating in the cost of the project or has other special interests in it.
- .14 The local agency is certified for project administration in accordance with [Chapter 13](#).

No project can be advertised until the following items have been completed:

- PS&E has been approved.
- The environmental document has been approved.
- The project's right of way has been certified.
- Project Disadvantaged Business Enterprise (DBE) and Training goals have been established.
- Construction funds have been authorized by Local Programs.
- A contract number has been obtained from the Region Local Programs Engineer.
- FHWA has authorized the project in FMIS.
- The Region Local Programs Engineer has concurred with advertising the project.

## 46.2 Procedures

**.21 Funding** – A Local Agency Agreement and construction funds must be authorized by the Local Programs before a contract is advertised.

**.22 Bidding Procedures** – The local agency is prohibited from establishing any procedures or requirements for qualification or licensing of contractors, which prevents the submission of bids or prohibits consideration of bids submitted by any responsible contractor, whether resident or nonresident of the state, except as outlined.

The prequalification of prospective bidders is the responsibility of the local agency. WSDOT will not prequalify prospective bidders for local agency projects. A local agency may at its option use the WSDOT prequalification procedure specified in the [Standard Specifications](#) M 41-10. If another procedure is used, it must be approved by FHWA prior to use. When an agency does not prequalify prospective

bidders, they shall afford ten days after notification for the low bidder to provide evidence of capability to perform the work.

When evaluating whether or not the Bidder is qualified to perform the work the following information should be considered:

- Experience
- Personnel
- Equipment
- Financial Resources
- Performance Record

Qualifications must, at a minimum, consist of bonding capability as required by state law and compliance with licensing requirements of state law. The local agency may include additional requirements.

When the DBE participation goal is included in the contract provisions, meeting the goal is part of the bidding requirements, as explained in [Chapter 26](#) and [Chapter 44](#).

For all FHWA projects, bidding opportunities, on a nondiscriminatory basis, shall be afforded to all qualified bidders regardless of state boundaries, race, sex, color, or national origin.

No bidder shall be disqualified or prevented from competitive bidding by restricting the purchase of a surety bond or insurance policy from any surety or insurer outside the state and authorized to do business with the state.

**.23 Preparation of the Project Proposal** – See WSDOT [Standard Specifications](#) Section 1.02.6.

**.24 Advertising of the Project** – Federal aid projects shall be advertised for a three-week period prior to opening of bids. The contract advertisement period shall be as follows: Projects shall be advertised in the local agency’s official legal publication at least twice, 20 calendar days prior to the last date upon which the bids will be received. The agency will award and execute the contract to the responsible bidder with the lowest responsive bid unless the agency decides that all bids are to be rejected. Local Programs must concur when rejecting all bids. An advertisement period less than three weeks may be approved in special cases when justified. Shortened advertisement periods shall be no less than two weeks and require approval from FHWA. Approval must be properly documented in the project file. Examples for requesting shorter advertising periods are as follows:

- Emergency correction of roadways or bridges.
- To meet the conditions of an environmental permit (fish windows).
- To meet the conditions of a Bureau of Reclamation Permit (Irrigation Canal).
- To complete project prior to a school district opening in the fall.

In addition, the justification for the two week ad request should include the following:

- Will the shorter ad period limit the competition?
- Will the shorter ad period increase the overall cost of the project?
- Does the project include a Disadvantaged Business Enterprise (DBE) goal and will it allow the subcontractors sufficient time to submit a bid to the proposal holders?

The project will be advertised in the official legal publication for the agency and, if necessary, other newspapers to provide the widest possible coverage commensurate with the size of the project. Affidavits of publication must be in the project file.

The local agency will comply with the standard USDOT Title VI Assurances by inclusion of the following language in the solicitations for bids:

“The (Local Agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.”

Should an addendum be necessary during the advertising period to correct or add something to the bid or plan data, such addenda if **minor** shall be approved by the CA local agency prior to transmittal to all the plan holders. A **major** addendum, which constitutes a change that significantly affects the cost of the project to the FHWA or alters the termini, character, or scope of the work requires HQ Local Programs approval. Each bidder shall present with their bid written notice of their receipt of each addendum received.

**.25 Bid Opening** – All bids received in accordance with the terms of the advertisement shall be publicly opened and announced, either item by item or by total amount.

If any bid received is not read, the name of the bidder and the reason for not reading the bid shall be publicly announced at the bid opening.

Negotiation with contractors, during the period following the opening of bids and before the award of the contract is not permitted.

Adequate justification for rejecting any bids must be documented by the local agency.

**.26 Evaluation of Bids for Award** – The local agency shall verify that all required bid documents have been properly submitted and executed by all bidders. All bids are then reviewed for accuracy, unbalancing of bid items, etc., and tabulations checked and confirmed. Any corrections to the bid tabulations are made, if necessary, in accordance with [Standard Specifications](#) Section 1-02 and 1-03.

In order for a bid to be considered responsive, a bid deposit of at least 5 percent of the total bid proposal must accompany each bid. In accordance with [Standard Specifications](#) Section 1 02.7, the Proposal Bond shall not be conditioned in any way to modify the minimum 5 percent required.

When there is a specified DBE goal for the project, the successful bidder will be selected on the basis of having submitted: (1) the lowest responsive bid which has met the DBE goal; or (2) when the DBE participation is less than the specified goal, responsiveness will be determined on the basis of good faith efforts to attain the goal. All agencies that have projects with mandatory DBE goals must submit the bid tabs, the DBE Utilization Certification and the DBE Written Confirmation Document of the apparent low bidder

to the Region Local Programs Engineer (LPE) to obtain concurrence to award before the contract is officially awarded to the apparent low bidder. Failure to gain LPE concurrence prior to award on every project with DBE goals and subsequent award of a contract to a nonresponsive bidder will jeopardize the project's federal funding. For more information on DBE program requirements, see [Chapter 26](#).

The local agency shall prepare a tabulation of bids showing the item details for at least the three lowest acceptable bids.

On projects where the lowest responsible bid exceeds the engineer's estimate, it is the local agency's decision whether or not to award the project. Reasons for justifying award:

- There was adequate competition for the project location and/or type of work.
- The project is essential to the public interest (safety, emergency repair, etc.).
- There was a significant error in the engineer's estimate.
- If advertising again would likely result in higher bids.

If the local agency determines that the lowest bidder is not qualified or deemed non-responsive, it shall document those findings prior to awarding the bid to the next lowest responsive bidder.

The Local Agency Agreement must be supplemented if any overrun or underrun occurs beyond the authorized amount. See [Section 22.3](#).

The original signed Supplemental Agreement form must be submitted to the Region Local Programs Engineer. This supplemental agreement form will be retained by WSDOT. It is the responsibility of the local agency to submit an additional supplemental agreement form or copy if they need an executed supplemental agreement for their files.

**.27 Award of Contract** – After bids have been tabulated and evaluated in accordance with the procedures described above, the construction contract may be awarded to the responsible bidder with the lowest responsive bid. Projects with DBE goals must have concurrence of the Region Local Programs Engineer prior to award. Failure to obtain LPE approval will jeopardize the project's federal funding. Prior to award, agencies must verify contractor status with the System for Award Management (SAM) at [www.sam.gov/portal/public/sam](http://www.sam.gov/portal/public/sam) to determine if a contractor and or a supplier has been excluded from bidding on a federal aid contract. The results of that search will be documented to the project file. SAM is the electronic version of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs (Lists), which identifies those parties that have been suspended, debarred, or otherwise excluded from bidding on federal procurement and nonprocurement contracts. Construction contracts awarded to firms listed on the Excluded Parties Listing will not be eligible for federal aid reimbursement.

After award by the local agency, the contractor must be advised of the award in writing. For an example of an award letter with a Voluntary DBE goal, see [Appendix 46.43](#). For an example of an award letter for a contract that has a mandatory DBE goal, see [Appendix 46.44](#). The information contained in the body of these examples must be included in the local agency letter.

**.28 Execution of Contract** – Local agencies shall not execute a contract with any contractor who is not registered or licensed in accordance with state laws.

The local agency prepares the necessary documents and forwards them for execution by the successful bidder and the proper officials of the local agency.

An example of a standard contract agreement is in [Appendix 44.73](#). The Region Local Programs Engineers can furnish these standard forms upon request.

### 46.3 Submittal of Award Data

The local agency must submit the following information to the Region Local Programs Engineer within **30 days** of award:

- Tabulation of bids.
- Engineer’s estimate.
- Award letter to the contractor.
- Names and addresses of all firms that submit a quote to the successful low bidder.
- DBE Utilization Certification, DOT Form 272-056 (if applicable).
- DBE Written Confirmation Document, DOT Form 422-031 (if applicable).
- Diversity Management & Compliance System (DMCS) contact information as follows,

<b>Agency</b>	<b>Contractor</b>
Name:	Name:
Title:	Title:
Phone:	Phone:
Email:	Email:

Failure to submit the above listed information, before construction begins, will result in a delay of reimbursement for the billed cost, until the information is received.

### 46.4 Appendices

- [46.41](#) Advertisement – Example
- [46.42](#) Local Agency Funds – Award Letter Example
- [46.43](#) Voluntary Goal – Award Letter Example
- [46.44](#) Mandatory Goal – Award Letter Example
- [46.45](#) Contract Bond – Example
- [46.46](#) Vacant



# Appendix 46.43 Voluntary Goal – Award Letter Example |

Date

Principle, Title  
Company Name  
Address  
City, State, Zip

Contract Number  
Project Title  
Federal Aid Number

Dear:

This letter is to advise you that the contract for the above referenced project has been awarded to your firm at your bid price of \$\_\_\_\_\_.

As a part of entering this contract, the contractor agrees to take all necessary and responsible steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises (DBE) have an opportunity to participate in the performance of this contract.

The award of this contract was made with the understanding that (Company Name), will provide the following items prior to submitting the signed contract for execution:

1. A list of all firms who submitted a bid or quote in an attempt to participate in this contract whether they were successful or not. Include the following information:
  - Correct business name and mailing address.

Send this information to (Local Agency name and address). Failure to provide this information prior to execution will result in forfeiture of the bidder's proposal security.

The Contractor shall submit a Small Business Enterprise (SBE) Participation Plan prior to commencing contract work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

The contract will be forwarded to you under separate cover. The contract must be signed and returned in accordance with the mailing instructions furnished with the contract documents. Please return these documents within 20 calendar days after the date of award.

Sincerely,

Local Agency

cc: Region Local Programs Engineer

## 53.1 General Discussion

After substantial completion of the work, the agency shall diligently pursue contract completion. In cases where the contractor is not diligently pursuing completion, the agency shall impose liquidating damages penalties, completion of remaining work with local forces or unilateral closure and claims against the contractor.

After the construction phase of a FHWA transportation project, done either by competitive bidding or by local agency forces, specific procedures are carried out to terminate the project's finances and review project performance. These procedures are necessary in order to settle any outstanding contract obligations, and to ensure that funds were expended properly.

This chapter lists requirements for closing the project accounts at WSDOT and FHWA and discusses project management reviews and project audits.

## 53.2 Closure

After the construction contract is complete, a 60-day project closure period begins. This closure period is initiated upon receipt of either a completion letter from the local agency or a final inspection of the project from the Region Local Programs Office. During this period, the local agency must complete the requirements described below.

**No further payment will be made after the date indicated on the 60-day closure letter without the approval of Local Programs.**

The local agency may request, however, that the 60-day closure period be extended. In this case, the local agency shall submit a written request to Local Programs justifying an extended closure period.

All Local Agency Agreements are required to have a Project Agreement End Date (2 CFR 200.309). Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be properly submitted for reimbursement within 60 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

**.21 WSDOT Project Review** – The Region Local Programs Engineer will conduct the final field inspection. It is suggested that the Region Local Programs Engineer be invited to the final project inspection with the contractor. If the final inspection reveals items that must be corrected or resolved before the project can be closed, these will be noted in the final inspection report. The Region Local Programs Engineer will work with the local agency to make the necessary corrections or to accomplish resolutions. If there is an unresolvable item indicating that a portion of project work is ineligible for FHWA reimbursement, WSDOT will issue a letter of notification outlining the ineligible work items and related costs.

**.22 Final Billing** – Within 60 calendar days of the completion date, the local agency shall submit a final bill (Appendix 23.71) clearly marked “Final Billing” and a Final Project Summary (Appendix 23.75) to WSDOT Headquarters Local Programs.

This final billing should include the following statement, “The total eligible costs to date have only been reimbursed by Federal agreement xxxx(xxx) and not by any other grant or funding source” and this statement should be endorsed by the signature designee. Additionally, properly completed DBE documentation must be received by HQ Local Programs prior to any final release of federal or State funds resulting from the Final Voucher process.

**.23 Project Closure** – Once the project has been reviewed and closed by FHWA, Local Programs provides the agency with an Administrative Review letter. The letter includes a final accounting and settlement of the total project costs, which may result in a payment or billing to the agency as appropriate; and provides information on records retainage.

### 53.3 Project Reviews

In order to be reasonably certain that local agencies are administering FHWA funds in accordance with the Local Agency Guidelines, WSDOT will perform procedural reviews on selected local agency ad-and-award projects.

These reviews will be:

- Project Management Reviews (PMR) performed by Local Programs (see [Appendix 53.51](#) for review questions for PMR's and Documentation Reviews).
- Documentation Reviews performed by the Region Local Programs Engineer.

The agency may lose CA status, have its delegation of authority reduced to a project or phase of a project, or be placed on probationary CA. This may be the result of:

- A PMR or Documentation Review.
- An audit by the State Auditor.
- Final project inspection.
- The qualifications and experience of the agency staff are altered.

**.31 PMR Preparation** – Local Programs, through the Region Local Programs Engineer, will schedule a PMR with the agency and will request that the local agency managers participate. The local agency should have all pertinent documentation ready for the scheduled review. Typical procedural review questions are listed in [Appendix 53.51](#). Typical documents to be examined during this review are also listed in [Appendix 53.51](#). All deficiencies will be identified for the agency at the time of the PMR. Copies of documentation not available at the time of review shall be submitted through the Region Local Programs Engineer within 30 calendar days. After the 30-day period, the final PMR letter will be sent to the agency.

**.32 PMR Deficiencies** – If no major deficiencies are found in the local agency’s project management methods, the local agency will be informed in writing of the review team’s findings and recommendations.

If major deficiencies exist, the local agency will be asked to take corrective action within 60 days. If the deficiencies include ineligible work, WSDOT will issue a citation letter.

If deficiencies exist in the agency’s procedures, management practices, or systems, or if specific project errors are found, WSDOT’s administrative response might be one or more of the following:

- No action against the agency.
- Joint conference with the Local Agency, Region Local Programs Engineer, and the Director, Local Programs or the director’s designee.
- Limit or withhold the agency’s future Certification Acceptance authority ([Chapter 13](#)) to the extent deemed necessary:
  1. Allow Certification on a project-by-project basis.
  2. Direct WSDOT to assign a Project Engineer to each project for supervision, inspection, and administration.
  3. Contract the supervision, inspection, and administration to a consulting firm.
  4. Delay project authorization until adequate supervision, inspection, and administration is available from the local agency, WSDOT, or consultants.
- Establish a repayment plan when violations to procedures make certain expenditures ineligible for federal reimbursement. Per Section VII of the Local Agency agreement, withholding of funds from the local agency’s gasoline tax distribution may be necessary if a satisfactory repayment plan is not established within 45 days.

## 53.4 Financial and Compliance Audit

**.41 Single Audit** – The local agency is responsible for ensuring that a federal single audit is performed in accordance with 2 CFR Part 200.501 – Audit Requirements. WSDOT is also responsible for ensuring that FHWA funds are properly expended. The State Auditor will therefore audit each local agency.

**.42 Project Audit** – A project audit by WSDOT Local Programs is triggered by deficiencies found during:

1. A routine audit by the State Auditor, either on an FHWA project or on any other project where federal funds are involved.
2. A documentation review.
3. A project management review.

**.43 Project Records** – Project records shall be maintained in accordance with the terms of the Local Agency Agreement and shall be made available to the audit personnel upon request. It is helpful if field notes and other documentation are available in sufficient detail to facilitate the audit review.

**.44 Audit Report** – The state auditor notifies Local Programs upon completion of a formal audit report. If findings on a particular audit arise, Local Programs contacts the agency to confirm the findings and coordinate resolution. Audit findings must be resolved within six months of the date that the audit report is issued. Upon resolution, Local Programs issues a Management Review letter to the agency and provides copies to the FHWA. Audits will normally include the following categories:

- Interagency Agreements
- Land Development or Land Acquisition Projects
- Tier Contracting Procedures
- Fund Management – Transactions
- Accounting Methods – Cash or Accrual
- DBE-EEO Practices
- Use of Grant Acquired Equipment

## 53.5 Appendices

- 53.51 Local Agency Project Management Review Checklist (DOT Form 272-024 and DOT Form 272-026)
- 53.52 Final Inspection of Federal Aid Project
- 53.53 Vacant
- 53.54 Certified Payroll Example